Technology Industries of Finland

3/6/2020

To the International Co-operation and Tax Administration Division, Centre for Tax Policy and Administration

Comments on the public consultation document: Review of Country-by-Country Reporting (BEPS Action 13)

Technology Industries of Finland ("TIF") represents Finnish technology industries and has over 1,600 member companies, sizes varying from small SMEs and start-ups to world leading MNEs. The technology industry is comprised of five sub-sectors: electronics and the electrotechnical industry, mechanical engineering, metals industry, consulting engineering and information technology. Technology industry is the most important export industry in Finland, with operations constituting over 50 % of all Finnish exports and responsible for 70 % of all R&D investments carried out in Finland. Over 300,000 Finns work in technology companies, while a total of around 700,000 people work in the technology sector directly or indirectly (of a total population of 5,500,000).[1]

TIF is thankful for the possibility to comment the document and would cordially wish to draw the attention of the OECD to the following.

1 Key messages

- The OECD, countries and companies have invested great effort in implementing the current CbCR procedures. As the CbCR has been in use for only a couple of years, **no substantial changes should be made at this point.** Also, tax administrations need to have time to adapt their processes and data analysis tools.

- The OECD mentions the ongoing work on the Pillar 1 (change in corporate taxation of consumer facing business) and Pillar 2 (minimum tax) proposals and suggests that there might be considerations ongoing whether CbCR may be used to support implementation and operation of Pillar 1 and 2.
    - TIF highlights that **CbCR is to be used only for its original purpose: as a high-risk assessment tool**. Not a base for taxation.
    - In Pillar 1, Amount A -model **new nexus cannot trigger a CbCR reporting responsibility.**

- **TIF supports the 750 MEUR threshold** and suggests it is not lowered, so that SMEs will not be burdened with too heavy administrative work. It is also in line with the proposed threshold of Pillar 1 Amount A -model and possibly also Pillar 2 minimum tax -model.

- Concerning the **master file**, some jurisdictions are requesting information and format well beyond the action 13 standard. **No extra information should be requested, but the OECD standard respected.** Also, **all countries should accept the automatic exchange of CbCR data.**

- Taxation procedures must be simple, effective and efficient. **Filing formats, processes, timing and frequency should be standardized**, respecting the filing schedule of the

[1] For further information of TIF's member companies, please see https://teknologiateollisuus.fi/en

ultimate parent entity. This will reduce the administrative burden of companies and tax authorities as well as **enhance digitalisation and automation of taxation procedures**.

- **Jurisdictional reporting should be maintained.** Switching to reporting per entity would cause additional administrative burden and increase the risk of using the CbCR as a basis for taxation.

- Choice between using the consolidated financial statements or aggregated data as a base for the CbCR divided opinions of the TIF member companies.

- **TIF is opposed to public CbCR.** The tax administrations already receive the necessary data for conducting taxation. Publicly reporting is an unnecessary administrative burden, including high risk for misinterpretations and request to reveal commercially sensitive data.

2 Chapter 1 – Appropriate and effective use of CbCR

Local rules and regulations covering TP documentation which deviate from BEPS action 13 format bring significant extra compliance burden and expenses to MNEs. Deviations in master file (and local file) tend to mean additional information to be included, separate format for filing, requirement of the use of local language, additional TP forms.

Especially master file seems to be problematic. In practice, a standard master file is prepared in the headquarter. However, currently MNEs need to prepare several versions of the master file due to local requirements (additional information and/or filing format) in certain jurisdictions, because they are requesting information and format well beyond the action 13 standard, for example on:

- demanding translation of the whole document to the local language. **One common language i.e. English should be agreed**.
- requests to disclose e.g. a list of entities and their addresses engaged in development & management of intangible property, or
- a list of all important intangible property of the group along with the legal entities and addresses which own the intangibles (eg. in India and China).

Additional data requested are not considered to be relevant for high-risk assessment. Besides, a lot of this information is already disclosed in the CbCR. Thus, the tax authorities receive the relevant data in any case. Thus, the same information must not be requested again in the master file.

<u>Standardised filing</u>

Due to the problems described above, filing procedure should be standardised to the greatest extent. This means **filing formats, processes, timing and frequency** (e.g. filing annually vs. once and then only when changes occur) **should be standardised**. The timing should respect the filing schedule of the ultimate parent entity.

Currently MNE companies have to notify in advance in each country, in different filing formats i.e. which entity is going to report CbCR in the group. Common standardised form should be used that can be **submitted to all jurisdictions in a centralised manner**. TIF suggests that the notification from the parent entity, executed to Finnish tax authorities (Large

Taxpayers' Office), could be exchanged to all group entities, via tax authorities in jurisdictions where the subsidiaries are located, instead of having all executing same kind of request one by one to local tax authorities. Also, **all countries should accept the automatic exchange of CbCR data.**

No substantial changes should be made now

The OECD, countries and companies have invested great effort in implementing the current CbCR procedures. The CbCR has been in use for only couple of years, and we have yet to see how successful CbCR will be in reaching the desired outcomes.

OECD's work on a substantial change to corporate taxation (Pillar 1 and 2) is ongoing. Finalised proposals and agreements are expected before year end 2020. The work is expected to cause changes to transfer pricing and CbCR rules as well, as the OECD points out in this public consultation document ("might be considerations ongoing whether CbCR may be used to support implementation and operation of Pillar 1 and 2"). As the Pillar 1 and 2 models are not ready, no significant changes should be made to the CbCR at this point, to avoid excessive costs to companies and tax administrations due to repeating changes in systems and processes. Concerning Pillar 1 and 2 proposals, TIF also highlights that:

- **CbCR is to be used only for its original purpose: as a high-risk assessment tool**. Not a base for taxation.
- In Pillar 1, Amount A -model a new nexus is proposed, where a taxable permanent establishment can be triggered also in a jurisdiction where the MNE has no physical presence. A **new nexus must not trigger a CbCR reporting responsibility.**

Tax administrations need to have time to adapt their processes and data analysis tools. There should not be such data requested, that the tax administration does not need or cannot use. There has been experiences that not all tax administrations are able to gather and analyse the requested data, resulting in requesting additional data or in different formats in vain. This additional administrative work should be minimized. We do not have enough information on how the tax administrations will handle tax audits on the reports. Further time is needed to procedures and legal practice to be formed and to be able to analyse the figures reported.

Specifically, there have been some practical challenges with new tax administrations implementing the CbCR rules (e.g. Saudi-Arabia, Nigeria). According to our experience, in many cases the guidance on the implementation has come unreasonably late and the guidance has been unclear. Additionally, the tools introduced by the tax administrations have been complicated to use and sometimes not working at all. The CbCR has been requested in paper format or pdf. Distributing sensitive information by email or post is not acceptable. Also, this raises the question of how a data analysis can be done without proper tools and on data only on paper format. **TIF hopes the OECD can provide these countries support and comprehensive guidance to help implement the current CbCR rules**.

As a summary – for the reasons described above **no substantial changes should be made at this point.**

3 Chapter 2 – Scope of CbCR.

TIF is of the opinion that the turnover threshold of 750 MEUR should not be lowered. CbCR administrative costs are not limited to making additional calculations and filings, but the main burden would result from a significant investment need to alter IT systems to cater for the new type of accounting/reporting. This investment would have nil business value add. These extra costs (not required for business reasons) are in proportion more burdensome and costly to SMEs, binding money that otherwise could be used for eg. investments to R&D or personnel.

The 750 MEUR threshold is also in line with the proposed threshold of Pillar 1 Amount A - model and possibly the same threshold will be used concerning the Pillar 2 minimum tax - model.

4 Chapter 3 – Content of CbCR

Chapter 3.12 Entity vs. jurisdiction reporting

An MNE may operate in e.g. 50 jurisdictions but have e.g. 200 group entities. Reporting on entity-by-entity basis would be an additional compliance burden. Besides, the systems are now built on reporting on jurisdictional basis and changes would be needed to report on entity-by-entity basis.

In addition, when there are several group entities in a jurisdiction there is usually tax consolidation or group contribution regime available and applied. Thus, reporting taxes paid/deferred taxes on entity-by-entity basis may not be even possible. Additionally, revenue etc. depends on the applied TP model i.e. reporting entity specific figures lack proper TP analysis and thus do not present the whole picture.

As argued in the public consultation document. "It is noted that preparing table 1 on entity-by-entity basis may be less beneficial if constituent entities have multiple different activities" (chapter 87). It is rather normal for an MNE Group entity to have multiple activities i.e. separate segments for e.g. manufacturing, distribution, R&D, intra-group services which are remunerated differently. For example, manufacturing and contract R&D on TNMM/net cost plus and distribution on TNMM/ROS or a segment can be fully fledged where the other segment is limited risk. In these situations, reporting CbCR neither on entity-by-entity nor on jurisdictional basis gives a proper picture. This is only visible in transfer pricing documentation.

Please also see divided comments on consolidated vs. aggregated data, which also effect the comments on entity vs. jurisdiction reporting.

Chapter 3.13 Consolidated vs. aggregated data

This question caused divided opinions. Some member companies prefer consolidated data. For these companies it would be unnecessary burdensome to adjust accounting and tax systems to divide consolidated data to parts. Some prefer aggregated data reporting because they do not have consolidated country level data. Thus, requirement to provide such data, which is not necessary for the business activities and reporting system does not disclose both would be an additional, immensely costly burden.

Eteläranta 10, P.O.Box 10, FI-00131 Helsinki
Telephone +358 9 192 31
www.techind.fi
Business ID: 0215289-2

Pro consolidated data:

Some companies see that due to consolidation and group contribution regimes tax authorities are in practice only interested in cross-border intra-group transactions. Thus, it would be sufficient to tax authorities to receive consolidated data which would also be easily available within an MNE and would thus ease the MNE compliance burden.

Pro aggregated data:

Some companies comment that they do also have entity level data in the consolidation system and use that as a basis for CbCR. If required to choose, they would rather apply entity specific reporting than the consolidated figures per country, as they currently do no country level consolidations for group reporting purposes.

It was difficult to fully understand whether "consolidated" means country level consolidated sub-group data or group level consolidated data. If the companies are not preparing country level consolidation for other purposes, this requirement would mean a considerable cost increase.

Chapter 3.14 Proposals for additional columns

Most of the additional columns in table 1 are already covered in transfer pricing documentation/local file. This would just mean duplicated work and increase admin costs. Requesting a lot of additional data does not seem to be needed if the intention is to use the CbCR as a high-risk assessment tool only. If additional columns are suggested because there is an intention to use CbCR for example for the purpose of the OECD Pillar 1 and 2 proposals, there should not be changes made now, when there no knowledge of what information would be needed. TIF highlights that CbCR should only be used to its original meaning, high-risk assessment tool.

<table>
<tr><td>Related party interest income</td><td rowspan="6">These intra-group ("IG") transactions are also required to be included in the TP documentation local file. Including it also to CbCR would lead to double reporting i.e. unnecessary reporting burden.

There seems to be no particular reason to distribute amounts of certain IG transactions between two related parties among all jurisdictions.

CbCR does not contain any description on applied TP model. CbCR neither contains proper delineation of actual transaction (including analysis on functions, risks and assets) and comparability analysis. Thus, CbCR is lacking essential information for assessing the arm's length nature of the transactions.

Type and allocation of IG expenses depends on the applied TP Model. In a centralized (principal model) IG service charges</td></tr>
<tr><td>Related party royalty income</td></tr>
<tr><td>Related party service fee income</td></tr>
<tr><td>Related party interest expense</td></tr>
<tr><td>Related party royalty expense</td></tr>
<tr><td>Related party service fee expense</td></tr>
</table>

Research and development (R&D) expenditure	may ultimately be compensated by principal (included in the cost base). Further, to avoid unnecessary internal invoicing IG service fees can also be directly charged to the principal. These ways are not visible in the CbCR but are explained and analyzed in proper TP documentation. For example, if IG service fees are directly charged to the principal, it could in CbCR result in abnormally high amounts for the principal which in turn would show in risk analysis and lead to unnecessary questionnaires. In addition, when e.g. profit split is applied even interest expenses may, after initial payments, be included in calculating the residual profit (EBT basis). In such case initially high interest expenses might not be fully carried by the debtor. This is not visible in the CbCR but is explained and analyzed in proper TP documentation and could thus look like an entity is having an extensive amount of interest expenses. Similarly, it would not be visible that another entity is covering part of the financial expenses due to application of profit split method.
Total related party expense	Total related party expense is also an inaccurate measure. Total amounts of IG transactions per jurisdiction/entity depend heavily on TP model. Without any information on TP model (which is included in e.g. TP documentation) this is a figure that can easily be misleading and may lead to unnecessary inquiries by tax administrations.
Deferred taxes	Disclosing only the current tax might fail to give the correct and full picture. Thus, reporting deferred taxes might be reasonable. However, in case this means change in deferred taxes, ie. the profit and loss impact (in the same way as the current tax expense reported), the OCI part of the deferred tax would not have an effect. Same applies to deferred taxes posted directly to equity.

Chapter 3.17 Standardised industry codes

The OECD asks for comments whether Table 2 could require reporting of standardised industry codes for each constituent entity. Mentioned benefits of this approach are easier comparison of companies (operating in the same jurisdiction and sector) for tax risk analysis as well as statistical and economic analysis. Will to have standardised information for statistical purposes is understandable but the purpose and need for this request for high-risk assessment is debatable. Especially when considering the vast amount of additional work and costs, and risk of revealing commercially sensitive data.

As also mentioned in the public consultation document there are multiple industry code standards in use currently and group entities may have multiple activities which would fall in under different categories. This would lead to inconsistency of reporting between MNEs and regions. The availability for industrial codes for PE's and branch offices is unclear.

Eteläranta 10, P.O.Box 10, FI-00131 Helsinki
Telephone +358 9 192 31
www.techind.fi
Business ID: 0215289-2

When forced to report a single entity code in CbCR there is a risk that this code would be taken as default and as the only acceptable industry code for transfer pricing benchmarking analysis. Such an interpretation would lead to unacceptable situations, in breach with other transfer pricing rules. For example, based on TPG 3.38 it is at arm's length to broaden the search for comparables by using e.g. uncontrolled transactions that take place in the same geographical market but in other industries.

Instead of requiring standardised industry codes, the companies would wish for more guidance on Table 2 terms, such as:

- What is the main business activity and how is this specified (threshold)?
- Why are admin, management and support services mentioned in the same column?
- There is a column for provision of services to unrelated parties, but no equivalent column for internal services that do not fall under support services category (or low value adding services).

Chapter 3.18 Possible pre-determined fields to Table 3

In general, the less additional (free text) information is required the better. Such information is burdensome to prepare. However, it should still be allowed (not required) to use free text area, in case companies need to clarify their answers.

Number of proposed fields (on pg. 65)	
1	Yes, this is useful information.
2	Should not be required. Open to interpretations and need for extensive further clarification if kept as now presented.
3	Should not be required. It is not possible to describe such information in one form. Such information is already required by TP documentation rules. It can be properly analysed in TP documentation and should not be required in Table 3.
5-10	If necessary, these fields might be added, in case the information can be adequately given by ticking the box and explained in a few words type of information. Wide additional explanations should not be required.

For more information, please contact:

Maria Volanen
Head of Taxation Policy
Industrial Policy
Technology Industries of Finland
Mob: +358 40 5323 744
maria.volanen@techind.fi