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Important disclaimer regarding the limitations of the Country-by-Country report statistics

The BEPS Action 11 final report stressed the limitations of available data to analyse BEPS and recommended the publication of a range of data and statistical analyses relevant to the economic analysis of BEPS in an internationally consistent format, including anonymised and aggregated statistical analyses prepared by governments based on the data collected under the Action 13 Country-by-Country Reports (CbCRs).

The CbCR statistics have a number of limitations that affect the quality of the data. As it is critical that all users of the CbCR statistics be aware of the limitations and data quality issues identified, and their potential to impact analyses carried out using CbCRs, this 'health warning' serves to make these limitations clear.

While some of the limitations are of a general nature and were acknowledged in the design of the BEPS Action 13 minimum standard or are inherent to the data collection process, others became known as jurisdictions began compiling the CbCR statistics.

The OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) has undertaken efforts to address the latter set of limitations through two approaches. First, through the 2020 review, by developing solutions to issues identified that, once approved by the Inclusive Framework, will entail a modification to the CbCR standard. The review process, which is well advanced, is being carried out by the Joint Working Party No.6 (WP6) and Working Party No.10 (WP10) Group on BEPS Action 13, a subsidiary body of the OECD's Committee on Fiscal Affairs. A public consultation on the 2020 review was held in May 2020.

Second, through the issuance of implementation guidance where questions of interpretation have arisen and do not require a modification to the standard. The implementation guidance that accompanies BEPS Action 13 is updated periodically.

General limitations

Limited information

The CbCR statistics do not include some information that would be useful for the analysis of BEPS. For example, the data do not show the ownership structure of MNEs or details of intracompany transactions since CbCR reports do not provide this information. In addition, the data do not contain information on items such as intangible assets (e.g., patents, trademarks), debt, intracompany interest and royalty payments, or taxable income. The inclusion of some of these items is under discussion as part of the 2020 review, however, there is a trade-off between the compliance burden for MNEs and data availability for the economic analysis of BEPS.

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Fiscal years covered

The anonymised and aggregated CbCR data collected for the 2016 CbCR statistics and published in the second edition of Corporate Tax Statistics are compiled with CbCRs for fiscal years starting between 1 January 2016 and 1 July 2016. The anonymised and aggregated CbCR data collected for the 2017 CbCR statistics and published in the third edition of Corporate Tax Statistics are compiled with CbCRs for fiscal years ending between 1 January 2017 and 31 December 2017. As a result, the comparability between the 2016 and 2017 data is limited and some CbCRs might be included in both vintages of the CbCR statistics.

Aggregation

In the compilation of CbCR statistics, the preservation of taxpayer anonymity is of paramount importance. Jurisdictions were asked to provide as much detail as their jurisdiction's confidentiality standards allowed, with each jurisdiction applying its own confidentiality standard. As a result, some jurisdictions where a small number of CbCRs have been filed have not been able to provide any data. In addition, many jurisdictions are not able to report the statistics set out in the CbCR tables at the greatest level of disaggregation due to the need to preserve confidentiality. Where the number of MNE groups is not sufficiently large, the jurisdiction may report aggregated tabulations (i.e., a lower level of detail, such as by geographic region) or not report certain tabulations or ratios at all. While important in ensuring confidentiality, aggregation of the statistics is also a limitation as it reduces the detail of the data and obscures the effects of potential outliers.

Tax-exempt entities

Tax-exempt MNE groups, and tax-exempt entities within an otherwise taxable MNE group, are generally included in a jurisdiction's CbCR statistics, except where these have been specifically excluded from the statistics by the jurisdiction, as noted below. The inclusion of tax-exempt entities and MNE groups affects the analysis of the aggregated data, because they will typically have revenues, profits, and employees, but no taxes paid or accrued. For example, any analysis involving the calculation of effective tax rates should be interpreted with caution, because the inclusion of tax-exempt entities can result in artificially low effective tax rates.

Different data treatment across submitting jurisdictions

In the compilation of aggregate CbCR statistics, jurisdictions took different approaches concerning the cleaning procedure applied to the underlying microdata.[1] In some cases, figures submitted by MNE groups are taken at face value while in other cases revisions were undertaken, after consultation with concerned MNE groups or independently by submitting jurisdictions.

Also, while tax exempt entities and MNE groups (e.g. certain pension funds) are generally included in the aggregate statistics, some jurisdictions removed these entities and MNE groups from the aggregate values (e.g. in order to preserve taxpayer confidentiality). Comparability across anonymised and aggregated statistics submitted by jurisdictions may be limited by the differences in data cleaning and treatment of tax-exempt entities and MNE groups. Jurisdiction specific information is included in the dataset metadata, indicating whether a cleaning procedure was applied to the microdata and whether tax-exempt entities and MNE groups are excluded.

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[1] Tax administrations have encountered a number of issues regarding data quality in CbCRs filed to date. A detailed report on common errors is available at: www.oecd.org/tax/beps/common-errors-mnes-cbc-reports.pdf.

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Treatment of intracompany dividends

The specific instructions on page 33 of the BEPS Action 13 report provided that "revenues should exclude payments received from other constituent entities that are treated as dividends in the payer's tax jurisdiction." However, there are no similar instructions that such amounts should be excluded from profit before income tax.

In the absence of specific guidance, some jurisdictions have required MNEs to exclude dividends from constituent entities from profit before tax, while others required these amounts to be included if they are reported in profit for financial accounting purposes, and a third group of jurisdictions remained silent on this topic. Where jurisdictions have not issued guidance, it is not known which approach has been adopted by each MNE in preparing its CbCR. This means that, for the majority of CbCRs filed, it is not known whether dividends from constituent entities are included in profit before tax. Some clarification could come from the additional notes accompanying each CbCR, however, the analysis of this information is not straightforward as such information is not standardised.[2] Some jurisdictions have carried out their own independent analysis providing evidence of the inclusion of dividends.[3]

The lack of consistency on this issue limits the use of CbCR data for economic and statistical analysis. In the absence of a consistent approach, any analyses involving the calculation of profit margins (profit before tax/total revenue), effective tax rates (income tax accrued/profit before tax), return per employee (profit before tax/number of employees), return on tangible assets (profit before tax/tangible assets) or return on capital (profit before tax/stated capital) should be interpreted with caution and subject to significant sensitivity analysis.

Uncertainty about the inclusion or exclusion of intracompany dividends in profit before tax hampers the interpretation of CbCR statistics and the comparability of the aggregate data across reporting jurisdictions.[4] In particular, the inclusion of intracompany dividends in "profit (loss) before income tax" can result in artificially low effective tax rates (ETRs). This is because dividends are typically not tax deductible by the paying entity and so, unlike other intra-group payments, are not controlled transactions for transfer pricing purposes. As dividends represent a distribution of post-tax profit, dividends received from related parties are often lightly taxed or tax-exempt. The tax treatment of repatriated dividends can differ across jurisdictions, for example they might be tax exempt or taxed at a reduced rate or with credit for underlying foreign taxes.[5] Thus, the inclusion of intracompany dividends in profit might result in artificially low ETRs as a result of high levels of profit (the denominator of the ETR) and relatively low tax accrued or paid (the numerator of the ETR).

This issue concerns all MNEs, and may be more pronounced among ultimate parent entities; given that they are at the top of the ownership structure, they potentially receive a large amount of dividends from affiliates.

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[2] For the purpose of Anonymised and Aggregated CbCR statistics, jurisdictions were not required to submit the additional information MNE groups could report in Table 3 of their CbCR submission as illustrated in Annex III to Chapter V, *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report* DOI: https://dx.doi.org/10.1787/9789264241480-en.

[3] Country-specific analysis undertaken by the Netherlands, Ireland, Italy, Sweden, and the United Kingdom are available at: Netherlands: https://oe.cd/3Kp; Ireland: https://oe.cd/3Kn; Italy: https://oe.cd/3Ko; Sweden: https://oe.cd/3Kq; United Kingdom: https://oe.cd/3Kr.

[4] In the same way, there is uncertainty about the possible inclusion in profit before tax of other participation results (e.g. pro rata share of the earnings of subsidiaries).

[5] In the European Union, the Council directive 2011/96/EU limits the ability of EU Member States to tax received dividends, in order to exempt dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes and to eliminate double taxation of such income at the level of the parent company.

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Finally, intragroup dividends are typically discretionary payments and can vary significantly from year to year. Including these amounts in profit before tax can create significant bias in an MNE's CbCR.

In 2019, the Inclusive Framework clarified the appropriate treatment of intracompany dividends by updating the guidance document that accompanies BEPS Action 13.[6] The updated guidance specifies that dividends from constituent entities must be excluded from profit before tax. This will ensure a uniform approach to the treatment of intracompany dividends for fiscal years commencing on or after 1 January 2020, though the guidance encourages earlier adoption of this treatment where possible.

Treatment of stateless entities

The BEPS Action 13 report states that an MNE's CbCR should include tax jurisdiction-wide information relating to the global allocation of the income, taxes paid and economic activity in tax jurisdictions in which the MNE operates. The specific instructions state that a separate line should be included in Table 1 for all constituent entities that are not resident in any tax jurisdiction for tax purposes. In the CbCR model template, the residence jurisdiction of these entities is recorded as ISO code X5 ("stateless").

Examples of stateless entities include:

- *Non-transparent entities with no tax residence*: Entities that are not transparent for tax purposes, but do not meet the requirements to be considered tax resident in any jurisdiction;[7]
- *Transparent entities resident in a different jurisdiction*: Entities that are tax transparent in the jurisdiction in which they would otherwise be resident, which are held by constituent entities resident in a different jurisdiction; and
- *Transparent entities resident in the same jurisdiction*: Entities that are tax transparent in the jurisdiction in which they would otherwise be resident, which are held by constituent entities resident in the same jurisdiction (e.g., shareholders, partners).

In the first case, unless the entity undertakes activity through a permanent establishment, or measures such as controlled foreign corporation rules apply, there is a risk that profits may not be taxed anywhere. In the second case, whether the entity's profits are subject to tax will depend upon whether the entity is viewed as tax transparent in the jurisdiction of the entities that own it (resident in a different jurisdiction), and whether the hybrid mismatch rules recommended under BEPS Action 2 apply.

Finally, in the third case, whether the entity's profits are subject to tax will depend upon the tax rules applicable to the entities that own it (in the same jurisdiction). Suppose that two entities co-own a transparent entity, where all are resident in the same jurisdiction. In general, these two entities will be subject to tax on their shares of the profits of the transparent entity. However, in a CbCR, the third case may give rise to double-counting of revenue and profit: revenue and profit will be reported as "stateless" by the transparent entity as well as in the jurisdiction in which the entities operate. As a result, ETRs will be artificially low. Once again, this would exaggerate the magnitude of any potential estimate of BEPS. The issue of stateless entities only affects the aggregated and anonymised CbCRs provided by some jurisdictions. The treatment and reporting of entities that are not resident anywhere for tax purposes (so-called "stateless entities") are under discussion as part of the 2020 review.

[6] OECD (2019), *Guidance on the Implementation of Country-by-Country Reporting – BEPS Action 13*, OECD, Paris, www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf.

[7] This could come about if a constituent entity is established in a jurisdiction that determines tax residence based on effective management, and is effectively managed in a jurisdiction that determines residence based on establishment. Under these circumstances, the entity would not be resident anywhere for tax purposes.

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Use of aggregate versus consolidated data

The BEPS Action 13 report requires MNEs to report aggregate tax jurisdiction-wide information ("aggregate data") in a CbCR as opposed to requiring them to report consolidated tax jurisdiction-wide information ("consolidated data").[8]

The principle behind aggregate data is to combine (aggregate) the separate information on each constituent entity in a jurisdiction, where no adjustment is made for transactions between constituent entities in the same MNE. For example, consider a sale from one constituent entity to another for ultimate sale to a third party; using aggregate data, the sale amount would be double-counted in total revenues (i.e., once in "related party revenues" and again in "unrelated party revenues"). In contrast, consolidated data treats the constituent entities of an MNE in a particular jurisdiction as a single economic entity. Therefore, in combining the separate information on each constituent entity in a jurisdiction, an adjustment is made for transactions between constituent entities in that jurisdiction (though no adjustment is made for transactions with constituent entities in other jurisdictions). In the example given, using consolidated data, the sale amount would only be counted once.

There are two main potential differences between the content when prepared using aggregate data as compared to if they were prepared using consolidated data. The first (and perhaps most important) difference is likely to be in related party revenues, as aggregate data will include all revenues received from constituent entities in the same jurisdiction. The same difference will also be reflected in total revenues. The second difference is likely to be in stated capital. Aggregated data could include several times what is, in effect, the same capital, if this is invested in two or more constituent entities in the same jurisdiction.

Thus, the use of aggregate data could distort a number of key ratios. In particular, profit margins (profit before tax/total revenue) may be reduced; the proportion of related party revenues (related party revenues/total revenue) may be increased; revenue per employee (total revenue/number of employees) and revenue per unit of tangible assets (total revenue/tangible assets) may be increased; and return on capital (profit before tax/stated capital) may be reduced. However, ratios based on unrelated party revenues (instead of total revenues) and tangible assets (instead of stated capital) would not be affected by the use of aggregate data.

Furthermore, when data is reported in larger geographic groupings for the purpose of aggregate CbCR statistics (e.g. continents or foreign jurisdictions total) no adjustment is made for intra-group transactions, which might further inflate revenues and stated capital.

Reporting of deferred taxes

The BEPS Action 13 report includes specific instructions that income tax accrued (current year) in the CbCR template "should not include deferred taxes or provisions for uncertain tax liabilities."[9] This is helpful in that it focuses on an MNE's current tax for the fiscal year. However, in calculating ETRs for an MNE's constituent entities in a particular jurisdiction, this can create a mismatch between the calculation of profit before tax (which is calculated under accounting principles) and income tax accrued (which is essentially based on taxable profits calculated under tax rules in the relevant jurisdiction).

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[8] See paragraph 24, *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264241480-en.

[9] See Annex II to Chapter V, *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264241480-en.

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Where there are permanent differences between the calculation of profit under accounting and tax rules (e.g., where a category of income is tax-exempt in a jurisdiction), then this does not pose a concern, as the resulting low ETR would be relevant for the purposes of a high level risk assessment or statistical analysis. However, it may be unhelpful if temporary differences between the calculation of profit under tax and accounting rules (e.g., due to differences in depreciation schedules) mean that an MNE appears to have a high or low ETR in a jurisdiction when in fact this relates solely to a timing issue.

This issue would affect income tax accrued and any metrics calculated using income tax accrued, including ETRs (income tax accrued to profit before income tax), though the bias may be downward and to a lesser extent upward. This issue also concerns income tax on cash basis.

The reporting of deferred taxes is under discussion as part of the 2020 review. The public consultation invited discussion as to whether to include deferred taxes as an additional column in a CbCR.

General caution against the calculation of ETRs

Two of the issues described above may give rise to the potential double counting of profits. The first is the ambiguous treatment of intracompany dividends in profits. The second is the treatment of stateless entities, which plays a role in some jurisdictions, many of which may represent pass-through income that is double counted. For these reasons, it is likely that profits in the current iteration of the CbCR statistics are overstated, in some cases potentially substantially. In addition, the inclusion of tax-exempt entities and MNE groups mentioned above can further distort the relationship between tax and profit variables. This limitation restricts the potential of the CbCRs for the calculation of several key ratios as discussed. Given these limitations, it is likely that ETRs are biased downwards, and that profitability ratios and returns to capital are biased upwards.

Given that the potential scale of this double counting issue is difficult to assess and correct for, the Inclusive Framework expressly cautions against the calculation of ratios such as ETRs based on these statistics. Those using these statistics should, at the very least, carry out sensitivity analysis to benchmark the CbCR statistics against other relevant data sources (e.g., taxpayer microdata or firm-level financial statistics) before using them for statistical analysis.

To evaluate the potential magnitude of included dividends, some jurisdictions have carried out their own independent analysis.[10]

In addition, there are many differences between accounting profits and taxable profits as they serve different purposes, and these differences can lead to biases in any resulting ETR calculation.

***Corporate Tax Statistics 2024* was released on 11 July 2024. To access the report and its dataset, please visit: https://oe.cd/corporate-tax-stats**

[10] Country-specific analysis undertaken by the Netherlands, Ireland, Italy, Sweden, and the United Kingdom are available at: Netherlands: https://oe.cd/3Kp; Ireland: https://oe.cd/3Kn; Italy: https://oe.cd/3Ko; Sweden: https://oe.cd/3Kq; United Kingdom: https://oe.cd/3Kr.

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