

# client alert

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## THE EUROPEAN COMMISSION MOVES FORWARD ON PUBLIC COUNTRY-BY-COUNTRY REPORTING BY MULTINATIONAL COMPANIES

editorial

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On 12 April 2016, the European Commission published its legislative proposal for public country-by-country reporting ("the CBCR proposal"). This proposal aims at promoting tax transparency and accountability by imposing on certain multinational companies the obligation to publish tax information, broken down country-by-country.

This Commission legislative proposal is one more piece in the European puzzle of recent measures adopted to fight tax avoidance and promote transparency. It comes in the wake of the Anti-Tax Avoidance Package issued by the Commission back in January this year and duplicates for certain multinational companies the requirement to disclose tax information on a country-by-country basis - a requirement already imposed for instance on banks and investment firms under Directive 2013/36/EU (CRD IV).

In principle, public country-by-country reporting allows stakeholders to gain a better understanding of the structures of financial groups, of their activities and geographical presence. It helps to understand whether taxes are being paid where the actual business activity takes place.

*"This is a carefully thought through but ambitious proposal for more transparency on tax. While our proposal on CBCR is not of course focused principally on the response to the Panama papers, there is an important connection between our continuing work on tax transparency and tax havens that we are building into the proposal."*

Lord Hill

Earlier this year, a first draft of the CBCR proposal opted for limited disclosure, with a detailed country-by-country breakdown for tax information related to EU Member States, but on an aggregated basis for non-EU jurisdictions. In response to the Panama Papers, the Commission reinforced its CBCR proposal; it results in the proposal in a higher level of transparency for taxes paid by multinational companies in jurisdictions posing specific tax challenges.

This alert presents the main elements of the CBCR proposal and its wider policy implications.

## AN AMBITIOUS PROPOSAL CONSISTENT WITH OECD PRINCIPLES

This new legislative proposal takes place in the context of the global efforts undertaken, at international and European level, to prevent aggressive tax planning and boost tax transparency while creating a level playing field for all businesses.

The scope of the CBCR proposal covers all EU and non-EU multinational companies that is currently active in the EU's single market with a permanent presence in the Union, and with a consolidated turnover of at least EUR 750m. This is in line with the scope of OECD recommendations (Action 13: Country-by-Country Reporting); it is estimated it will cover around 6 000 multination companies.

The information to be reported includes i) the nature of the activities; ii) the number of employees; iii) the total net turnover made (including turnover linked to intragroup transactions); iv) the profit made before tax; v) the amount of income tax due in the country, vi) the amount of tax actually paid during that year, and vii) accumulated earnings.

The CBCR proposal is not only consistent with the OECD principles; it actually goes a step further by requiring public reporting. The key information listed above must be made available (for 5 years), not only to tax administrations (which in any case should receive additional and more granular tax information), but also to the public. In the opinion of the Commission, this should allow EU citizens to get information about where in the EU companies are paying taxes, and contribute to greater accountability.

## TAX TRANSPARENCY, FIGHT AGAINST TAX HAVENS AND LEVEL PLAYING FIELD

In its proposal, the Commission seemed to attempt killing two birds with one stone: increasing tax transparency on the one hand, and making progress on the EU joint approach to tax jurisdictions which pose specific tax challenges on the other hand. For the Commission, the Panama Papers highlighted the relevance of having an EU list of jurisdictions which do not abide by tax good governance standards.

Tax jurisdictions will be assessed based on the criteria set out in the Commission's Communication on External Strategy for Effective Taxation, presented in January 2016, an ongoing piece of work of the Commission.

By going further than the OECD recommendations and with the adoption of a reinforced CBCR with respect to third countries, the Commission is opening a debate with implications beyond the EU territory. The international level playing field is at stake and with this proposal there may be a greater risk of subjecting companies to increased double/multiple taxation by tax authorities without efficient mechanisms to arbitrate between companies and tax authorities.

Last, the question may be raised whether the proposal does strike the right balance between transparency and administrative burden. Upcoming discussions in Parliament and in the Council will determine whether policy makers consider that the appropriate balance has been reached indeed.

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