# European Union

# EU Public Country-by-Country Reporting

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**Issue:** International Transfer Pricing Journal, 2022 (Volume 29), No. 3
**Published online:** 22 April 2022

**This article provides an overview of the new obligations, risks and perhaps also opportunities that EU public country-by-country reporting entails for the large MNE groups subject to CbCR obligations.**

## 1. Introduction

Six years have passed since country-by-country reporting (CbCR) obligations were first introduced, back in 2016. Based on statistics provided by the OECD, more than 100 countries have now introduced CbCR obligations and over 3,000 relationships are in place for the exchange of CbC reports between countries. In July 2021, the OECD published a new set of aggregated and anonymized data from CbCRs, providing information on the global tax and economic activities of around 6,000 multinational enterprise (MNE) groups. In its press release of 29 July 2021, the OECD mentioned that "the new statistics suggest continuing misalignment between the location where profits are reported and the location where economic activities occur".[1] The OECD stated that the "evidence of continuing BEPS behaviors as well as the persistent downward trend in statutory corporate tax rates reinforce the need to finalize agreement and begin implementation of the two-pillar approach to international tax reform".[2]

In the meantime, the European Union moved forward and adopted in December 2021 its Directive on public CbCR, after amending and finalizing the draft Directive initially proposed already in 2016.

With developments continuing at a fast pace, in practice, MNE groups try to keep up proactively with the regulatory landscape and developments and try to understand the impact for their business, their data and system requirements, and their compliance resources and processes.

In this article, we will provide an overview of the new obligations, risks and perhaps also opportunities that EU public country-by-country reporting entails for the large MNE groups subject to CbCR obligations. The final form and content of the public CbCR requirement will obviously depend on how the Member States codify public CbCR in their domestic legislation. However, we will assess the expected impact based on the framework provided in the EU Directive, placing this in the context of the past five years of CbC reports submitted to tax authorities, and in the context of the continuing trend of tax transparency and additional requirements that lie ahead.

## 2. The Past Five Years of Mandatory Global CbCR

### 2.1. Background

The well-known OECD/G20 Base Erosion and Profit Shifting (BEPS) Project, which ended in 2015, among others identified that there was a lack of data for tax authorities to easily evaluate and counter BEPS behaviour of MNE groups. This led to the introduction of CbCR as part of a new, three-tiered format for transfer pricing documentation, laid down in the BEPS Action 13 Final Report.[3]

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1. *See* OECD, *Corporate Tax Statistics*, p. 42 (3rd ed., OECD 2021), available at Corporate Tax Statistics: Third Edition (oecd.org) (accessed 30 Mar. 2022).
2. *See* OECD, New OECD data highlights the importance of the international tax reform discussions (29 July 2021) (accessed 30 Mar. 2022).
3. OECD, *Transfer Pricing Documentation and Country-by-Country Reporting – Action 13: 2015 Final Report* (OECD 2015), Primary Sources IBFD [hereinafter BEPS Action 13 Final Report].

The recommendations from the BEPS Action 13 Final Report were gradually codified by countries in their domestic legislation on a global scale over the course of approximately two years. Currently there are over 100 tax jurisdictions which have a CbCR legal framework in place.[4] The CbC reports are exchanged between tax jurisdictions under more than 3,000 active exchange relationships, based on the mutual ratification of the CbC Multilateral Competent Authority Agreement, on establishment of bilateral Competent Authority Agreements (e.g. used by the United States), and based on EU Council Directive 2016/881/EU (so-called DAC4).[5]

## 2.2. The framework for tax authority CbCR

The threshold for MNE groups to submit a CbCR is for most tax jurisdictions EUR 750 million consolidated group revenue in the preceding year (or the local currency equivalent). The CbCR obligation lies generally with the ultimate parent entity (UPE) of the MNE group, in the tax jurisdiction where the UPE is tax resident. Tax jurisdictions may require to locally submit a CbCR when there is no CbCR requirement in the tax jurisdiction of the UPE country, when there is no active exchange relation between the tax jurisdictions (so-called white spots in exchanges relations), or when there is a systemic failure in the exchange. Over time, the number of white spots has decreased considerably.

A CbC report consists of three parts. Firstly, the CbCR rules require disclosure of aggregated financial information per tax jurisdiction on certain identified data points, which should allow for a quick scan of the reporting MNE group's global allocation of business presence and results (table 1 of the CbC report). The ten data points currently included are revenue (related party, third party and total), profit before income tax, employees, taxes paid and accrued, capital, retained earnings and tangible assets. Secondly, the CbCR rules also require reporting of certain non-financial data, such as entity names, addresses and the main business activity per entity (table 2 of the CbC report). Thirdly, the CbC rules require certain obligatory explanations in a free-of-form text field, which MNE groups may also use to provide additional clarifications and information related to the respective CbC report as they deem appropriate and helpful for interpretation of the report.

## 2.3. CbCR in practice

In 2022, most MNE groups in scope have submitted five CbC reports and have implemented annually recurring procedures and controls around the CbCR requirements. In the first rounds of CbCR submissions, most MNE groups faced difficulties with the collection of aggregated data from one or multiple sources, overall data consistencies and the application of different accounting principles in the sources of data. Questions arose, for example, of how to identify all covered constituent entities (including branches), how to spot and break down sub-consolidations, how to deal with adjustments, capital reserves, premium, tax refunds and other data point definition details. After several rounds of composing the CbCR data, most of the MNE groups still have to make manual adjustments in the process of collection of the relevant CbCR data and of mapping such data to the respective data points in table 1 and 2 of the CbC report. In general, MNE groups take care in making the same adjustments year on year, to provide the authorities with consistent CbCR data.

As mentioned, CbCR was introduced in the BEPS Action 13 Final Report to provide tax authorities with helpful information for high-level transfer pricing risk assessments.[6] One might expect that in the years since the introduction of CbCR there has been an increase in the number of transfer pricing audits. In the practice of the authors (the Netherlands) no increase has been noticed in transfer pricing audits which are directly relating to the data provided in the CbCR or audits where the authorities state that CbCR data is the direct source of the audit. Other regions could have seen an increase in transfer pricing audits.

This raises the question of how tax authorities have used and still intend to use the information provided. In the practice of the authors, questions and comments from tax authorities with respect to CbCR mainly relate to consistency with CbCR notifications, unreadable data or incomplete data, and trends or significant fluctuations in data in the table 1 and table 2 of the CbC report. In most cases, adjustments could be made relatively easily with a revised submission, and additional explanations could clarify data changes. In the cases known to the authors, MNE groups were all committed to comply timely, although in the start-up years, due to the developing regulatory landscape and finetuning of interpretation of definitions and guidance, occasionally revisions were needed. The CbC reports did not seem to directly trigger transfer pricing adjustments and no CbCR-related fines were imposed.

An explanation for the absence of a noticeable increase in transfer pricing audits could be that the information presented in the CbCR does not provide the tax authorities with enough ground for starting a transfer pricing audit. From a transfer pricing documentation perspective, the CbCR would provide a quantitative validation of the descriptions in the Master File and Local File. Tax authorities could use the CbCR to validate whether the FTEs reported per tax jurisdiction are aligned with the descriptions in the functional analysis. A more perceivable reason would be the limited capacity and the development phase

4. *See* https://www.oecd.org/tax/beps/beps-actions/action13/ (accessed 30 Mar. 2022).
5. *See* https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm (accessed 30 Mar. 2022).
6. *See supra* n. 4.

of data expertise within the organization of tax authorities. In recent years, tax authorities have been recruiting data analysts, therefore we expect that in the near future CbCR information will be analysed and selected for further examination via smart algorithms or other computer software. CbCR data from an MNE group could be compared to external data like comparable (local) companies and market trends. Software could also automatically analyse whether the MNE group shows BEPS-type behaviour, such as intangible property (IP) that is separated from IP-related activities, year-on-year changes in the location of assets and revenue in low-tax jurisdictions with no activities.

### 2.4. In summary

The implementation of CbCR has provided MNE groups with an additional annual compliance burden. In practice, the authors have not seen a direct link between CbC reports submitted on the one hand, and an increase in transfer pricing audits or adjustments on the other. This raises the question of how tax authorities have used or still intend to use the CbC information provided.

## 3. Voluntary Public CbCR

### 3.1. Background

For non-financial reporting, there are several metrics, principles, frameworks and standards where companies commit to publicly making available certain tax information, in some cases also including country-by-country data or information on a group's total tax contribution. Examples of well-known standards are World Economic Forum International Business Council metrics (WEF-IBC),[7] Global Reporting Initiative (GRI)[8] and Bteam.[9] Each of these initiatives include sections focusing on tax transparency. The GRI is frequently used by a variety of companies in different industries. GRI was initiated in 2000 and provides a sustainability reporting framework for companies that perform non-financial reporting. GRI is a voluntary framework, which companies can use to comply with non-financial reporting requirements, in separate reports or integrated with their financial annual accounts.

### 3.2. The framework for voluntary public CbCR

As part of a broader non-financial reporting framework the GRI organization introduced, in 2019, the Global Reporting Initiative 207 (GRI 207). GRI 207 has tax as a subject and came into force on 1 January 2021. When a company is preparing its non-financial reporting in accordance with the GRI standards and considers tax as a material topic, it is required to use the GRI 207 standard. For the determination of material topics for a company for non-financial reporting, the following guidance is provided by GRI:[10]

> A combination of internal and external factors can be considered when assessing whether a topic is material. These include the organization's overall mission and competitive strategy, and the concerns expressed directly by stakeholders. Materiality can also be determined by broader societal expectations, and by the organization's influence on upstream entities, such as suppliers, or downstream entities, such as customers.[11]

GRI 207 includes several topics relevant for the subject of tax in a company including the approach to tax, the company-wide tax strategy, the approach to regulatory tax compliance, description of tax governance and control framework, and the approach on engagement with tax authorities. In addition, the GRI 207 standard requires companies using the GRI non-financial reporting standard to provide certain listed information for each separate tax jurisdiction where companies included in the consolidated accounts have tax residency.

The data to be reported per country is very similar to the data points listed in the OECD Action 13 CbCR, although GRI 207 is a bit narrower at some points as it does not require reporting addresses of the group companies, tax identification numbers, stated capital or accumulated earnings. On the other hand, GRI 207 has a somewhat wider scope by not applying a size threshold (i.e. any MNE group covered by non-financial reporting requirements and applying GRI standards to comply may be covered by the GRI 207 standard) and by including a requirement to reconcile third-party revenue, profit/loss before tax, tangible assets and corporate income tax paid on a cash basis to the statutory tax rate over profit. GRI 207 also requires inclusion of a statement on a possible difference between the tax paid and the tax accrued when the statutory tax rate is applied on the profit/loss.

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7. *See* https://www.weforum.org/stakeholdercapitalism (accessed 30 Mar. 2022).
8. *See* https://www.globalreporting.org/ (accessed 30 Mar. 2022).
9. *See* https://bteam.org/ (accessed 30 Mar. 2022).
10. Reporting Principles for defining report content in GRI 101: Foundation.
11. *See* https://www.globalreporting.org/standards/media/1036/gri-101-foundation-2016.pdf (accessed 30 Mar. 2022).

When a company makes its annual accounts publicly available (per regulations or voluntarily), the non-financial reporting will be publicly available as part of the annual accounts. When the company uses the GRI framework for its non-financial reporting and tax is a material topic, its country-by-country data is publicly available.

### 3.3. Trends and experience in practice

The authors see a tendency in recent years towards proactive public tax transparency of MNE groups. Where CbCR data of companies is currently reviewed and interpreted by tax authorities and treated confidentially, public CbCR data will be interpreted by the public without any financial or tax-related knowledge. This will require more and different explanations and clarifications to proactively address scrutiny and public attention. Including such explanations and clarifications will be especially relevant for the first movers.

### 3.4. In summary

Increasing tax transparency and creating a level (information) playing field for tax authorities can be considered a positive development. With CbCR data available publicly there can be an increase of public debate about the tax contribution of specific MNE groups, which can lead to public scrutiny. Public scrutiny could be one-sided and unjust considering that the interpretation could lack tax knowledge and specific knowledge around the financial data.

## 4. Obligatory Public CbCR under the EU Public CbCR Directive

### 4.1. Background

In 2016, the European Commission proposed a Directive[12] requiring MNEs to publish information on where they make their profits and where they pay their tax in the European Union on a country-by-country basis. After years of being in deadlock, the proposal gained momentum when in February 2021 the EU Member States' responsible ministers, in a public debate, expressed their support for the proposal and agreed to move forward.

In the following months, the compromise text was adopted, with a few changes to the proposal, by the Council and the European Parliament, and finally, in December 2021, the Public CbCR Directive was published in the Official Journal of the European Union.[13]

### 4.2. Who is in scope?

The Directive is applicable to both EU-headquartered MNEs and non-EU-headquartered MNEs doing business in the European Union through a subsidiary or branch with a total consolidated revenue of more than EUR 750 million in each of the last two consecutive financial years.[14] The report covers the latter of those two consecutive financial years. Conversely, an MNE group falling below the EUR 750 million threshold in each of the last two consecutive financial years would no longer be subject to the reporting obligations.[15]

For non-EU-headquartered MNEs, the rules apply to a "medium-sized" or "large" subsidiary governed by the national laws of a Member State and a qualifying branch in any of the Member States in the European Union. The classification of a "medium-sized" or "large" subsidiary needs to meet on an entity basis at least two of the three criteria for that category on two consecutive balance sheet dates, as shown in Table 1.

**Table 1 – Classification of small, medium-sized and large undertakings**

| Requirements | Small undertaking | Medium-sized undertaking[1] | Large undertaking |
|---|---|---|---|
| Balance sheet total | ≤ EUR 4,000,000[2]<br>(up to EUR 6,000,000) | ≤ EUR 20,000,000 | > EUR 20,000,000 |

12. Proposal for a Directive of 12 April 2016 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.
13. Directive EU 2021/2101 of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, Primary Sources IBFD [hereinafter Public CbCR Directive].
14. Art. 48b(1) Public CbCR Directive.
15. Art. 48b(1) Public CbCR Directive.

| Requirements | Small undertaking | Medium-sized undertaking[1] | Large undertaking |
|---|---|---|---|
| Net turnover | ≤ EUR 8,000,000[3] (up to EUR 12,000,000 | ≤ EUR 40,000,000 | > EUR 40,000,000 |
| Average number of employees during the financial year | ≤ 50 | ≤ 250 | > 250 |

1. Medium-sized undertakings are undertakings which are not small undertakings

2. A Member State may increase this threshold, but not exceeding EUR 6 million.

3. A Member State may increase this threshold, but not exceeding EUR 12 million.

In light of the above, there could be consequences in terms of compliance for some non-EU-headquartered MNE groups as each of the "medium-sized" or "large" subsidiaries would in principle trigger a reporting requirement.

## 4.3. What is included in the report?

The Public CbCR Directive requires MNEs to disclose the following tax information: (i) brief description of the nature of their activities; (ii) number of employees on a full-time basis; (iii) net turnover; (iv) profit or loss before income tax; (v) income tax accrued; (vi) income tax paid; and (vii) accumulated earnings.[16] This information should be presented using a common template and electronic reporting formats which are machine-readable. The common template and electronic reporting formats will be prepared and released by the Commission.

In order to avoid creating an administrative burden, the Public CbCR Directive allows MNEs to publish a report based on the reporting instructions of the Council Directive 2011/16/EU (so-called DAC4).[17]

With regard to the disclosure of information, the Public CbCR Directive requires MNEs to disclose details on their economic activity in every EU Member State, as well as in every jurisdiction that is in either Annex I (the so-called "blacklist") or Annex II (the so-called "gray list") of the EU list of non-cooperative jurisdictions.[18] To report the information on third jurisdictions, a relevant jurisdiction should, on 1 March of the financial year for which the report is to be drawn up, be listed in the blacklist. Likewise, the disaggregate data reporting applies if a relevant jurisdiction is, on 1 March of the financial year for which the report is to be drawn up and on 1 March of the preceding financial year, listed in the gray list. For all other jurisdictions, the information should be disclosed jointly on an aggregated basis.

## 4.4. When to publish

Member States agreed to transpose the Public CbCR Directive into national law by 22 June 2023. The first financial year of reporting will be the year starting on or after 22 June 2024 at the latest, i.e. a Member State could also choose to apply the rules earlier. The reports will need to be published within 12 months from the end date of the balance sheet of the financial year in question.[19] For taxpayers with a financial year equal to the calendar year, the first year of reporting would be 2025 and the report should be made public by 31 December 2026 at the latest.[20]

## 4.5. How to publish

For EU-headquartered MNEs, the report needs to be published on the website of the ultimate parent undertaking (UPU) and submitted to the commercial registry of the Member State where the UPU is governed by its national laws.[21] For non-EU-headquartered MNEs, each "medium-sized" or "large" subsidiary or qualifying branch in the European Union needs to publish the report on its website and submit it to the commercial registry of the Member State where they are established, unless the non-EU UPU (voluntarily) publishes the CbC report on its website and assigns one EU-based subsidiary or branch to also publish the report on its website and submit the report to the commercial register of the Member State where it is established. The information in the report should be made in at least one of the official languages of the European Union and should be available free of charge to any third party located within the European Union.[22]

16. Art. 48c(2) Public CbCR Directive.
17. Art. 48c(3) Public CbCR Directive.
18. Art. 48c(5) Public CbCR Directive.
19. Art. 48d(1) Public CbCR Directive.
20. In the example provided the first financial year of reporting starts on or after 22 June 2024. If a Member State decided to implement the rules earlier, the first reporting year could be different to this example.
21. Art. 48d(1) and (2) Public CbCR Directive.
22. Art. 48d(3) Public CbCR Directive.

## 4.6. Penalties, changes and audit

The Public CbCR Directive requires Member States to impose penalties on any infringements (failure to submit or omission) provided such penalties are effective, proportionate and dissuasive. However, the text of the Public CbCR Directive does not specify if there is a possibility to make corrections or changes on the report once it is published.

Furthermore, for those subsidiaries and branches governed by the law of a Member State and required to have their financial statements audited, the audit report should state whether the subsidiary or branch falls within the scope of the Public CbCR Directive for the financial year preceding the financial year for which the financial statements under audit were prepared and also whether the public CbCR was published in accordance with the Directive.[23]

## 4.7. BEPS Action 13 tax authority CbCR compared with EU public CbCR

Under BEPS Action 13, MNE groups are required to prepare and file a CbC report if meeting or exceeding the revenue threshold of EUR 750 million, taking into account all of the revenue that is (or would be) reflected in the consolidated financial statements.[24] The Public CbCR Directive also contains a revenue threshold of EUR 750 million but that threshold seems to be defined more narrowly as top-line revenue and needs to be exceeded in two years consecutively. If the euro is not the official currency in a jurisdiction, the applicable exchange rate used to convert the threshold amount for domestic codification of BEPS Action 13 is the one applicable as of 1 January 2015. Under the Public CbCR Directive the exchange rate to be used for domestic codification of the threshold in a different currency is the exchange rate applicable on the date of the entry in force of the Directive, i.e. 21 December 2021.

The scope of BEPS Action 13 is broader as it includes a deemed listing provision, and it enables MNE groups to select who the reporting entity is in specific cases. The Public CbCR Directive requires to report based on being actually consolidated in the financial statements and does not allow groups to select who the reporting entity is.

An overview comparison of the content of the reports is provided in Table 2.

### Table 2 – CbCR table 1 and table 2 data differences

| **Data point** | **BEPS Action 13** | **Public CbCR** | **GRI 207** |
|---|---|---|---|
| Names of entities | Yes | Yes | Yes |
| Business activities | Yes | Yes | Yes |
| Number of employees | Yes | Yes | Yes |
| Revenue aggregated total | Yes | Yes | Yes |
| Revenue third party | Yes | No | Yes |
| Revenue related party | Yes | No | Yes |
| Profit before tax | Yes | Yes | Yes |
| Tangible assets | Yes | No | Yes |
| Corporate income tax paid | Yes | Yes | Yes |
| Corporate income tax accrued | Yes | Yes | Yes |
| Stated capital | Yes | No | No |
| Accumulated earnings | Yes | Yes | No |

## 4.8. Experience in practice

Once Member States start transposing the Public CbCR Directive into domestic law, MNE groups in scope could expect a burdensome compliance landscape and face challenges in the same way as with the introduction of BEPS Action 13.

MNE groups should adjust their systems to be able to prepare a report in accordance with the Public CbCR Directive. From the above comparison (*see* Figure 1), it may be concluded that the information reported under BEPS Action 13 is more

23. Art. 48f Public CbCR Directive.
24. In the practice of the authors (Netherlands), the term "revenue for the purpose of determining if the threshold is exceeded" is generally interpreted in line with the interpretation of the term "revenue for the purpose of completing table 1 of the CbC report" (i.e. broadly defined as all income except dividends).

comprehensive than the information disclosed under the Public CbCR Directive and this difference could lead to some MNE groups considering the possibility to make publicly available the BEPS Action 13 Final Report.

Considering the public nature of the report, different types of users may access the report and interpret the data. As a reference, one could look at the report prepared in 2021 by the EU Tax Observatory,[25] in which it documents the activity of European banks in low-tax jurisdictions.[26] The report heavily criticizes the activities by these banks and shows how useful the CbC report can be to track profit shifting and corporate tax avoidance. In that regard, MNE groups should consider that the public CbC report would also be read by people without a financial and/or tax background, which may need a different explanation on how to read the report. MNE groups can use this opportunity to tell their own story and provide additional explanations to the CbC and tax information. This could be achieved by developing a solid narrative explaining the data, rather than focusing primarily on the technical data elements.

### 4.9. Conclusion

The Public CbCR Directive has a significant impact on both EU-headquartered MNEs and non-EU-headquartered MNEs doing business in the European Union. It is a big step in the tax transparency environment, where more stakeholders and civil society require more public tax reporting by businesses.

Companies should closely monitor the progress on the transposition of the Public CbCR Directive by Member States, since some of the rules are optional and also the rules could enter into effect sooner than 22 June 2024. They should assess the impact of the Public CbCR Directive on their business and, in particular, their broader public tax reporting strategy.

## 5. Going Forward – Increased Transparency and Data and Reporting Requirements

### 5.1. Background

EU public CbCR rules will be implemented during the domestic codification phase and then will start applying. Businesses covered by the rules must figure out how they impact them and must go through the technical exercise of data mapping, process automation and reporting simulations. Simultaneously, however, transparency, data and reporting requirements will continue to increase as a result of several other ongoing policy proposals and legislative initiatives. Tax and tax reporting is increasingly used as a tool for driving sustainable development and environmental, social and governance goals and behaviour; mandatory public and government reporting is used as a tool to fight tax avoidance and tax evasion. Having robust and concise data, with reconciliation, audit trail and consistency of various data sets is becoming more and more challenging.

### 5.2. Sustainability reporting developments – Will they include tax as a topic?

For a start, the European Union has introduced a classification system that can help identify environmentally sustainable economic activities and can help direct investment towards sustainable projects and activities: the EU taxonomy. The Taxonomy Regulation[27] entered into force on 12 July 2020. It requires that a company that is subject to the EU Non-Financial Reporting Directive[28] (EU NFRD) discloses the proportion of economic activities that is taxonomy aligned as environmentally sustainable. The Regulation defines six environmental objectives and four overarching conditions that an economic activity must meet to qualify as environmentally sustainable. Two delegated acts will define the technical screening criteria that must be applied to assess if economic activities make a substantial contribution to one of the objectives without significantly harming the other objectives. The proportion of activities that may be considered environmentally sustainable for the climate change mitigation and adaptation objectives will be disclosed in non-financial statements or reports published on or after 1 January 2022 (i.e. FY2021 disclosures) and for the remaining four environmental sustainability objectives, the non-financial statements or reports published on or after 1 January 2023 (i.e. FY2022 disclosures).

Simultaneously, the EU NFRD is being revised and a proposal was published on 21 April 2021 to expand the scope of this directive to all listed and large companies, to require audit, and to include more detailed reporting requirements (including the EU Taxonomy disclosures mentioned above). The name of the revised directive will become the EU Corporate Sustainability

25. *See* EU Tax Observatory, *Have European banks left tax havens? Evidence from country-by-country data* (Sept. 2021), available at https://www.taxobservatory.eu/wp-content/uploads/2021/09/EU-Tax-Observatory-Report-2-Banks-and-tax-havens-1.pdf (accessed 8 Apr. 2022).
26. Since 2014, European banks are required to publicly report country-by-country data on their activities.
27. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment. *See* http://data.europa.eu/eli/reg/2020/852/oj, and for more information, *see* EU taxonomy for sustainable activities | European Commission (europa.eu) (both accessed 30 Mar. 2022).
28. This currently lays down the rules on disclosure of non-financial information by certain large companies, Directive 2014/95/EU of 22 October 2014 amending the EU Accounting Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, Primary Sources IBFD. For more information, *see* Corporate sustainability reporting | European Commission (europa.eu) (accessed 30 Mar. 2022).

Reporting Directive (EU CSRD).[29] Simultaneously, the European Financial Reporting Advisory Group (EFRAG) has been tasked with developing a new set of European non-financial reporting standards. Currently it seems that the first set of standards would be adopted by October 2022 and that compliance with the new standards, including all EU Taxonomy objectives, would start for years on or after 1 January 2023. It is not clear yet if tax and CbCR will be included as part of the new non-financial reporting requirements.[30] However, the authors would not be surprised if it will be included. Taxation is increasingly seen as a social topic and EFRAG develops the standards in cooperation with other standard setters (such as GRI, which already applied a tax standard as explained above).

Also outside Europe, standard setters are considering (updated) standards for non-financial reporting. The IFRS Foundation for example announced at the end of 2021 the formation of a new International Sustainability Standards Board to develop high-quality sustainability disclosure standards.[31] Again, it is not clear yet if tax and CbCR will be included as part of new sets of non-financial reporting requirements.

Based on the above, the authors expect that non-financial reporting requirements will be expanded considerably to provide clear, uniform and audited information. This will allow review by the public, by investors and by other interested users, of the level of environmental sustainability and social contributions of companies. The latter might potentially encompass transparency on social contributions of businesses in the countries where they operate through taxes, in the form of public information on taxation and CbCR.

## 5.3. Countering of remaining BEPS with new allocation, taxation and publication rules

In 2015, the G20 and the OECD finalized their work on the BEPS Project with the issuance of final reports on 15 action points, which included, among others, the Action 1 Final Report.[32] In 2019, the OECD continued its work on the digital economy in a project referred to as BEPS 2.0.[33] The OECD has proposed a two-pillar solution to address the tax challenges arising from digitalization. Pillar One, in short, will facilitate revised nexus and profit allocation through the assignment for very large companies of a greater share of taxing rights over global business profit to market jurisdictions. Pillar Two, in short, will facilitate global anti-base erosion measures through new global 15% minimum tax rules. Pillar Two has been further designed in OECD Model Rules and in a proposed EU Directive.[34] The rules proposed for Pillar Two have touchpoints with CbCR definitions and data requirements, but also will require vast amounts of "new" data. For Pillar One, it is uncertain if any CbCR data will be used, but the related calculations will also require "new" data.

Lastly, one of the targeted solutions for 2022/23 mentioned in the Communication on Business Taxation for the 21st Century of the European Commission of 18 May 2021[35] includes the proposal for publication of effective tax rates (ETRs) paid by large companies, based on the same methodology to be used for BEPS 2.0 Pillar Two. So far, the announcement has not been followed by legislative proposals, and it is currently not clear if the ETR calculation will be connected to CbCR data. It seems likely, though, based on the recent developments on Pillar Two, that certain elements of CbCR will be leveraged.

## 5.4. Experience in practice

In practice, we see that more and more businesses move from responsive compliance to proactive transparency. To counter any possible remaining base erosion and profit shifting practices after the OECDs BEPS Project, companies are forced by regulation to provide public insight into their direct tax contribution in the countries in which they operate. However, direct tax is only one part of a company's total tax contribution and, moreover, simultaneously a tax shift is beginning, introducing new and increased environmental and resource taxes on polluting and linear activities and subsidizing and incentivizing sustainable and circular activities. Companies may consider the CbCR framework as too limited to demonstrate their total global tax footprint and contribution. Furthermore, companies may experience that their current enterprise resource planning (ERP) system settings do not provide sufficiently granular information on total taxes.

29. Proposal for a Directive of the European Parliament and of the Council of 21 April 2021 amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) 537/2014, as regards corporate sustainability reporting, available at https://ec.europa.eu/info/publications/210421-sustainable-finance-communication_en#csrd.
30. Interim draft documents can be found on the EFRAG website, *see* Sustainability reporting standards interim draft - EFRAG (accessed 30 Mar. 2022).
31. *See* IFRS - IFRS Foundation announces International Sustainability Standards Board, consolidation with CDSB and VRF, and publication of prototype disclosure requirements (accessed 30 Mar. 2022).
32. OECD, *Addressing the Tax Challenges of the Digital Economy – Action 1: 2015 Final Report* (OECD 2015), Primary Sources IBFD.
33. OECD/G20, Base Erosion and Profit Shifting Project, *Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note* (OECD Jan. 2019), available at Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note (oecd.org) (accessed 8 Apr. 2022).
34. *See* OECD, *Tax Challenges Arising from the Digitalisation of the Economy Global Anti-Base Erosion Model Rules (Pillar Two)* (OECD 2021), Primary Sources IBFD; and Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union 2021/0433, available at Directive Pillar Two_v24-11-2021_ISC-2 (europa.eu) (both accessed 30 Mar. 2022).
35. *See* Communication from the Commission to the European Parliament and the Council, *Business Taxation for the 21st Century* (18 May 2021), available at communication_on_business_taxation_for_the_21st_century.pdf (europa.eu) (accessed 30 Mar. 2022).

To be able to meet requirements on the various types of reporting, and to be able to obtain automated insights into total tax contribution of businesses, many more data points will be required. More granular information on taxes must become available from companies' ERP systems. Until now, CbCR data has been composed with the highest care but did not need to be reconciled with consolidated numbers, statutory accounts or tax returns, and was not a direct basis for the levy of taxes. In the future, one would want to be able to reconcile the data used for public tax and CbCR reporting, for Pillar Two reporting and for public ETR reporting, to be confident about the correctness of such data that may be used as a basis for the actual levy of taxes, and to create strong audit trails with hard controls.

### 5.5. Conclusion

The administrative burden for MNE groups will continue to increase. Differences in definitions, interpretations and data points required will complicate data assessment and reporting. Consistency and reconciliation of data will become even more important. Businesses will need to determine their data strategy to make sure that they can deal with differences in interpretation, explain differences in reporting, reconcile different reporting to commercial statutory financial statements, tax numbers and tax returns submitted.

Data availability, granularity and automated on-call insight into (total) tax data and audit trail will become key. In the long term, potentially we might even move towards raw data download for all assessment and reporting purposes, with direct tax and other taxes following in the footsteps of indirect tax for the automation of compliance processes.

## 6. Key Takeaways

Clearly, reporting requirements have increased consistently, following the call for more corporate data availability and for closing any remaining BEPS loopholes after the BEPS Project that was finalized in 2015.

In the authors' view, GRI 207's voluntary public CbCR seems more deviating and with a potentially broader application than tax authority CbCR, whilst EU public CbCR seems deviating in certain details and definitions (depending on domestic codifications) but overall may be narrower than tax authority CbCR due to the higher threshold for application and the option to aggregate data for rest of world countries.

Whilst tax authority CbCR allowed tax authorities to see beyond the country borders and get a global overview of multinational structures and division of profits across the world, EU public CbCR will enable a wide group of stakeholders to evaluate companies and will facilitate investor scrutiny, public pressure, peer comparison, and analysis of financial ratios, outliers and trends. The same applies for the additional reporting requirements that are being considered and developed. The various reports, therefore, need to support use and interpretation by non-financial users too.

The administrative effort needed to meet the tax authority CbCR requirements was perceived as high at the time of introduction. The process was also, unfortunately, made more complex by technical challenges (such as XML conversion, deviating XML schemas, secure submission channels requiring permits) and by countries applying deviating thresholds and requirements. It remains to be seen how this will develop for EU Public CbCR during Member States' codification processes. A push for uniform codification and peer reviews remains crucial.

The overall administrative burden of new and additional reporting requirements piling up on business seems higher than ever due to deviating definitions, requirements and thresholds for each new type of reporting, making it impossible to simply leverage one data set for each. Companies will need to get their house in order to produce reliable, per entity level, more granular, and human-error-proof automated data availability.

Our recommendation for companies to prepare for EU public CbCR and other new types of reporting still to come is to carefully monitor the legislative developments, to determine the impact and additional requirements for their organization's resources, systems and data processes, and to start doing test runs as soon as possible to spot and solve any challenges timely. The compliance and reporting team must be able to rely on the correctness, consistency and coherence of data, and narratives must be developed for new types of data users.