European Commission - Fact Sheet

Introducing public country-by-country reporting for multinational enterprises

Strasbourg, 12 April 2016

1. Why is the Commission proposing this initiative?

Since the beginning of its mandate, the Juncker Commission has pursued an ambitious agenda to ensure fair taxation, meaning that companies should pay their fair amount of taxes in the country where they generate their profits. Fighting against tax avoidance and aggressive tax planning is also a political priority for the European Commission.[1]

An environment of complex tax rules and fiscal secrecy has allowed some multinational enterprises to exploit non-transparent loopholes and mismatches in tax systems within the EU. According to a European Parliament study,[2] it is estimated that countries in the EU lose EUR 50-70 billion each year to corporate tax avoidance. Some recent investigations have shed light on the low taxes paid by certain multinationals and triggered public concern regarding the efficiency and fairness of the tax system.

With this initiative, the Commission is responding to the intense public demand to combine openness on company accounts and the level of taxes actually paid with the need to safeguard the competitiveness of EU businesses. Particular attention is also paid to tax information relating to countries that do not respect good governance standards.

Public transparency on tax is also an important part of companies' corporate social responsibility.

2. What exactly is the Commission proposing and who would be affected by it?

Today's proposal will respond to the intense public demand to combine openness on company accounts and the level of corporate income tax actually paid with the need to safeguard the competitiveness of EU businesses. In our proposal, we will pay particular attention to tax information relating to countries that do not respect good governance standards.

The European Commission is proposing to require large multinational companies to disclose publicly the income tax they pay within the European Union, country by country. In addition, they would be asked to disclose how much tax they pay on the business they conduct outside the European Union. For those tax jurisdictions that do not abide by tax good governance standards (so-called tax havens), this information will need to be disclosed on a disaggregated basis.

Any multinational company — European or not — that is currently active in the EU's single market with a permanent presence in the Union and that has a turnover in excess of EUR 750 million would have to comply with these additional transparency requirements.

Some additional information apart from tax paid is needed to put the tax information into context. The information to be disclosed on a country-by-country basis would include:

1. the nature of the activities,
2. the number of employees,
3. the total net turnover made, which includes the turnover made with third parties as well as between companies within a group,
4. the profit made before tax,
5. the amount of income tax due in the country as a reason of the profits made in the current year in that country,
6. the amount of tax actually paid during that year, and
7. the accumulated earnings.

This information would have to be disclosed for every EU country in which a company is active, as well as for the so-called tax havens. Aggregate figures would also have to be provided for operations in other tax jurisdictions in the rest of the world.

Reporting should also include explanations on discrepancies between the amounts of income tax actually paid and income tax accrued.

This information would be made available in a stand-alone report accessible to the public for at least 5 years on the company's website. Companies would also have to file the report with a business register in the EU.

3. What has the Commission done so far?

The fight against corporate tax avoidance has ramped up the European and global agenda in the past years. The EU is already leading the way internationally when it comes to tax transparency: we have in place binding measures to prevent the concealment of offshore funds. The recent press investigations, known as the Panama Papers, confirm once again the importance of this agenda, and the Juncker Commission will continue to pursue it with determination and with particular focus on tax transparency, as it has since the outset, including in the relevant international fora.

Member States have agreed to the Commission's proposal for transparency on tax rulings**[3]**and other important corporate tax reforms have been launched.

In November 2015, G20 leaders in Antalya endorsed the OECD Base Erosion and Profit Shifting (BEPS) Action Plan which introduces, among many other actions, country-by-country reporting to be submitted by multinational firms to a relevant tax authority, information which is then exchanged between tax authorities. In January 2016, the Commission proposed to introduce this provision in the EU and make it legally binding, through an amendment to the Administrative Cooperation Directive in follow-up to the Tax Avoidance Package (ATAP).**[4]** In March 2016, in record time, the ECOFIN Council reached a political agreement on this proposal.

The Commission will pursue its ambitious agenda for fair and effective taxation, with a number of other important proposals, including the re-launch of the common consolidated corporate tax base (CCCTB).

Today's initiative strengthens the work underway with additional transparency measures.

4. How did the Commission arrive at this proposal and who was consulted?

In order to determine whether further transparency on income tax information was needed, the Commission carried out a thorough analysis, which is reflected in the Impact Assessment accompanying this proposal, and summarised in an Executive summary.

The Commission consulted a broad range of experts and interested parties from summer of 2015 onwards and it also launched a public consultation. Over 400 respondents representing firms, industry associations, NGOs, citizens and think tanks responded to this consultation, a summary of which is available on the Commission's website.**[5]**

A synopsis report on all the consultation activities carried out by the European Commission to support this initiative is available on the website of the European Commission.**[6]**

Today's proposal is the result of this extensive feedback. It heeds calls from citizens, NGOs and trade unions for the EU to be a global trailblazer in this area, while also taking on board some of the concerns expressed by experts and businesses when it comes to ensuring that European companies are not at a competitive disadvantage vis-à-vis their non-EU rivals.

5. What is the legal basis of the proposal and why is there a need to amend the Accounting Directive?

This work has been undertaken to contribute to the Commission's overall objective of ensuring that the country in which a company's profits are generated is also the country of taxation.

This Directive does not propose the harmonisation of taxes, but instead refers to financial reporting obligations as regards income tax information. This is why Article 50 of the Treaty on the Functioning of the Union, which concerns the right of establishment and is the regular legal basis for initiatives in the area of company law, accounting and corporate financial reporting has been determined to be the appropriate legal basis. Today's legal proposal amends the Accounting Directive (2013/34/EU) and is therefore based on the same legal basis.

This means that this proposal is subject to qualified majority voting, not unanimity as is the case for legislation dealing with the harmonisation of tax rules.

6. How does this proposal address concerns flowing from the Panama Papers?

Particular opportunities for tax avoidance and tax evasion emerge in tax jurisdictions which do not respect international tax good governance standards. If multinationals are active in such jurisdictions, special transparency requirements will apply. A specific process is being introduced to provide full, country by country, disclosure [i.e., as for within the EU] to ensure a higher level of transparency as regards taxes paid by multinational companies in tax jurisdictions posing specific tax challenges, i.e.,

that do not comply with good governance standards on tax (see next questions).

7. Why is the Commission drawing up a list of tax jurisdictions posing specific tax challenges, and how does this relate to this proposal?

Panama Papers highlight the relevance of such lists and their potential to target problematic tax jurisdictions, if properly employed. Most of the third countries in which the offshore firms were located already feature on the pan-EU list. In January, the Commission proposed a new EU screening and listing process to identify and act against third countries that willingly enable tax abuse as part of its External Strategy for Effective Taxation. This common EU list will replace the current compilation of Member States' diverse national lists for tax purposes, first published in June 2015. The common EU list will be based on clear and internationally-justifiable criteria and a robust screening process. Importantly, the common EU list will also be backed by counter-measures for listed countries that refuse to comply with tax good governance standards.

The application of the internationally recognised tax governance criteria on which the common EU list will be based, and the cooperation with third countries on this matter will help us advance the tax governance agenda internationally. It is therefore crucial that Member States provide unequivocal political support for the common EU approach, so that it can be taken forward without delay.

Today's proposal on CBCR uses the same tax governance criteria as the basis for requiring multinationals to disaggregate data reflecting their activities in problematic tax jurisdictions. The new EU list will be presented by the Commission by means of a delegated act, provided for in the proposal.

In the meantime, the Commission is making an initial assessment of all third countries' tax systems from a good governance perspective, as set out in its External Strategy. It will present the first scoreboard results to Member States in autumn 2016.

8. How exactly will third-country tax jurisdictions be assessed?

Tax jurisdictions will be assessed based on the following criteria set out in the Commission's Communication on External Strategy for Effective Taxation, presented in January 2016:

- Transparency and exchange of information, including information exchange on request and Automatic Exchange of Information (AEoI) of financial account information;
- Fair tax competition;
- Standards set up by the G20 and/or the OECD; and
- Other relevant standards, including international standards set up by the Financial Action Task Force.

A pre-assessment of all non-EU tax jurisdictions from a good governance perspective will be conducted first. The final decision on whether a tax jurisdiction will be included in the list or not will be taken following a dialogue with the relevant jurisdictions. Member States' experts will be consulted by the Commission in the preparation of the delegated acts. Parliament and Council's experts will have equal access to all meetings and documents.

This list will be regularly reviewed and, where appropriate, amended to take account of new circumstances.

9. Why should the CBCR information disclosed be limited to seven categories?

The proposal foresees a detailed list of elements that are relevant for citizens to get a thorough understanding of a company's activities and taxes paid. Our analysis concluded that the information required is appropriate to enable the public to properly scrutinise multinational companies' tax strategies. It will enable citizens to have detailed insight regarding whether companies pay taxes in the country where profits are generated and assess whether significant profits have been shifted outside the EU.

10. Why are you asking for all the additional information beyond just tax paid?

The annual corporate income tax accrued is the key information. It corresponds to the corporate income tax expense shown in the profit and loss statement, excluding deferred taxes. The amount of tax paid will ascertain that the company has actually paid those taxes. Companies are also obliged to explain in a meaningful way the difference between taxes accrued and taxes actually paid. Moreover, companies will be obliged to disclose the amount of accumulated earnings (for example, non-distributed profits). Undistributed profits are not a problem per se. However, high levels of accumulated earnings in tax jurisdictions that do not abide by tax good governance standards can be seen as an indicator of potential attempts to avoid taxes.

11. How will you impose reporting obligations on non-EU companies?

An estimated 6,000 multinationals active in the EU would need to disclose publicly their tax-related information.

Medium-sized or large[7] subsidiaries of non-EU headquartered groups would be subject to the reporting obligation on behalf of their ultimate parent.

If a non-EU headquartered company does not have subsidiaries, but only branches, these branches would face similar obligations.

As an alternative for non-EU headquartered firms, a simpler option is offered: all reporting obligations on subsidiaries or branches would be lifted if the non-EU headquarters publishes its country-by-country report on its website, and entrusts one of its EU subsidiaries to file the report on their behalf with an official business register inside the EU.

A subsidiary is a company incorporated in a given country, with legal personality. A branch office opened in the EU is not a separate legal entity from the company that opened it. If that parent company is located outside the EU, the branch must file the financial statements of the company in the relevant business register of an EU Member State where the branch is located.

12. What would change with this proposal?

Companies established in the EU are already required to disclose certain information in their individual financial statements. These are filed with business registers, and therefore can be accessible to the public. However, it can be complicated and sometimes costly to reconstitute information regarding a group's operations *per country* on the basis of financial statements published by different subsidiaries.

This proposal will ensure that the information is made available to the public in a comparable, comprehensive and accessible way: this is an important additional tool which should incentivise companies to pay tax in the country where their profits are generated. In short, additional public scrutiny promotes fairer tax competition in the EU and is good for companies.

13. What's the difference between the information shared between tax authorities and the information now being made public?

Public reporting does not serve the same purpose as information sharing and reporting between tax authorities. There are some types of information that are required to be shared between tax authorities, but that are not part of this latest proposal for public CBCR. EU tax authorities will receive 12 pieces of information, whereas public CBCR will consist of just seven pieces of information. EU tax authorities will receive more granular data for all third countries in which an EU company is active. They will also get from companies more complex data relating to the breakdown of a group's turnover between that made with external parties and that made solely between group entities, as well as figures for stated capital and a company's tangible assets.

When it comes to public disclosure, it is important that EU citizens get information about where in the EU companies are paying taxes. Citizens also have a legitimate interest in knowing whether companies active in the EU are also active in so-called tax havens. However, demanding publicly disaggregated data for all third countries could affect companies' competitiveness and divulge information on key strategic investments in a given country. Similarly, the disclosure of turnover and purchases within a group poses a threat to multinationals in that it could divulge key information to competitors.

14. How will the public be able to monitor large multinationals' tax?

The reports on income tax information would be made available to the public on the company's website. Firms will also be required to file those reports in the relevant national business registers, which are also accessible to the public. This will enable a comparison of the tax paid by similar companies in similar situations or the tax contributions made to national governments by different companies. It can also help to identify potential weaknesses or loopholes in national tax systems. Up to now, it has only been via Parliamentary enquiries, for example, that comparable information has been made available.

Although it is true that the information will likely be used mainly by individuals and organisations familiar with accounting and taxation issues, the public at large will also be able to see how much tax has been paid in their country. Besides, nothing would prevent multinational companies from providing additional information to complement these figures.

15. Why would the reporting requirement only apply to companies with a consolidated turnover above EUR 750 million?

The threshold of a turnover above EUR 750 million strikes the balance between targeting the most relevant companies and avoiding unnecessary administrative burdens on smaller players:

- Firstly, as it is calculated on a worldwide basis it will cover large groups regardless of whether they are headquartered inside or outside the EU.

- Secondly, it captures only top-tier companies which, due to their size and complexity, are best equipped to engage in aggressive tax planning to the potential detriment of smaller SME competitors. No reference is made to the number of employees as even companies with only few employees may make significant taxable profits.
- Thirdly, the threshold would cover those companies controlling approximately 90% of corporate revenues made by multinationals, according to OECD figures.
- Finally, the thresholds are consistent with the international approach agreed by the G20 leaders as part of the BEPS OECD Action Plan agreed in November by the G20 leaders.

16. Why is there no requirement to disclose the taxes paid in other tax jurisdictions?

The main objective of the proposal is to ensure that companies that have activities in the European Union pay their fair share of tax here. The proposal requires companies to disclose, for all the information categories, an aggregate figure for all taxes paid outside the EU. This will enable the public to see if the share of taxes paid in the EU corresponds to the share of a group's business within the EU.

In addition, there are specific requirements relating to taxes paid in certain jurisdictions not abiding by good governance standards in the area of taxation. Information relating to such countries must be given in disaggregated form.

Existing tools, such as the requirement in the Anti-Tax Avoidance Package agreed during the ECOFIN in March 2016, will require firms to provide to EU tax authorities detailed country-by-country tax information for all countries where they have activities, both inside and outside the EU.

Requiring further geographical breakdown of information in a public country-by-country report would risk undermining the international level playing field and subjecting companies to increased double/multiple taxation by tax authorities without efficient mechanisms to arbitrate between companies and tax authorities. The impact assessment carried out in advance of this proposal determined that aggregated information as regards other tax jurisdictions in the rest of the world would be sufficient to meet the intended objectives. Since the proposal targets multinational companies, many of which have a limited turnover in the European Union, imposing an obligation to disclose disaggregated information would mean that a relatively small branch or subsidiary in the European Union could be subject to the disproportionate burden of being obliged to disclose information relating to a very high number of countries outside the Union. The proposal strikes the appropriate balance between transparency and administrative burden.

17. Would SMEs be affected?

No. Small and medium-sized companies are not covered by the proposal. The measure focuses on multinational enterprises that can afford to engage in tax planning activities, i.e. the largest ones. There is no need to subject small companies to similar measures given their inability in general to shift profits from one jurisdiction to another. The medium-sized or larger subsidiaries of non-EU multinational companies with turnover exceeding EUR 750 million will nevertheless have new obligations. If there are no subsidiaries, these obligations will fall on their branches of a comparable size. This is proportionate and efficient for groups with a turnover exceeding EUR 750 million.

18. How would this initiative help to create a level playing field?

This proposal puts EU and non-EU companies on the same footing, as both types of company would have the same reporting requirements.

It will also help to create fairer competition between multinational companies and those trading only in one market. Studies**[8]** have shown that a cross-border company pays on average 30 % less tax than a company active in only one country. This new disclosure requirement will also help to mitigate this disparity.

19. Would this initiative increase the administrative burden on companies?

Companies in OECD countries are already required to disclose such information to their tax authorities. Based on a thorough impact assessment, the Commission believes that the additional compliance costs for those companies affected, such as those related to public scrutiny of this information, are proportionate and justified by the benefits this proposal will bring.

20. How does this proposal tie in with the revision of the Administrative Cooperation Directive, or "CBCR to tax authorities"?

The Administrative Cooperation Directive was revised as part of the Tax Avoidance Package, so as to implement corporate CBCR to EU tax authorities, in compliance with the OECD standards endorsed by the G20.

The current proposal ties in with this major initiative on several accounts: in terms of scope, the same multinational companies would be subject to the obligation to submit a country-by-country report to their tax authority and to the public. In terms of content, the information to be reported to the public is less detailed in terms of the tax data to be provided than the information to be submitted confidentially to tax authorities.

21. Would it not have been easier to simply require the disclosure of the information prepared for tax authorities as required in the Anti-Tax Avoidance Package?

The ultimate aim of public country-by-country reporting is to enable public scrutiny on multinational companies' tax strategies. This is different from the aim of the exchange of information between tax authorities, which need to enter into the details of compliance with tax laws and potential business secrets. That is why it would not be appropriate to require exactly the same set of comprehensive information submitted by multinational companies to their tax authorities. Moreover, following the consensus developed within the G20, tax administrations are bound by their commitment to keep some parts of this information confidential, as they contain business secrets.

22. Banks already have to disclose information on a country-by-country basis. Would they also be affected by this initiative?

Since 2015, credit institutions and investment firms established in the EU (hereafter 'banks') have had to publish a stringent sectoral country-by-country report pursuant to Article 89 of the Capital Requirements Directive. Any bank in the EU must disclose this report and publish it together with its financial statements. The report includes country-by-country information on the names, nature of activities and geographical location, turnover, number of employees on a full-time-equivalent basis, profit or loss before tax, tax on profit or loss and public subsidies received. Among these banking groups, those with a consolidated turnover above EUR 750 million would fall within the scope of this initiative. In order to avoid multiple reporting, and given the similarities observed with the country-by-country disclosure obligation applicable to banks, the Commission proposes to allow these banking groups to continue to publish solely a country-by-country report in compliance with their sectoral requirements, as long as this report encompasses all of the group's operations, i.e. including operations that may not be subject to prudential reporting.

However, there are currently no requirements on non-EU parent banks operating in the EU. In this regard, today's proposal complements the existing banking legislation - these banks will now have to publish a country-by-country report if their revenues exceed EUR 750 million.

23. Extractive/logging industries are already subject to an obligation to prepare a report on payments to governments on a country-by-country basis. How would these industries be affected?

Extractive and logging industries in the EU with a turnover exceeding EUR 750 million will now have to comply with this proposal in addition to their current reporting obligations.

The reporting requirements of the two sets of country-by-country reports overlap as regards the amount of corporate income taxes paid. The reporting obligations on extractive and logging industries authorises a *de minimis* threshold of EUR 100 0 00 to filter out small payments. No such threshold is proposed in the country-by-country reporting applying to all industry sectors. In addition, the sectoral and general country-by-country reports may have differing geographical coverage and degree of detail. Due to these differences, the same amounts of corporate income taxes paid will have to be reported in different ways in each country-by-country report.

The timelines set out for the country-by-country reports for the extractive and logging industries and for the proposed public country-by-country report also differ, as the latter would have to be filed together with the financial statements, a requirement that does not exist for the former. It is estimated that those differences will entail no significant additional burden for the extractive/logging companies.

24. What is the interplay with the negotiations on the Shareholder Rights Directive?

On 8 July 2015, in the framework of negotiations on the Shareholder Rights Directive, the European Parliament proposed amendments to the Accounting Directive with a view to introducing public country-by-country reporting. This amendment sought to extend to all industry sectors the existing country-by-country reporting which banks started to publish in 2015. The Commission hopes that these negotiations can now be concluded as rapidly as possible.

25. Who would be responsible for the preparation and the publication of the report on income tax?

EU multinational companies with a turnover above EUR 750 million would be responsible for the preparation of the reports.

As regards multinationals headquartered in non-EU countries, the responsibility would lie with

the members of the administrative, management and supervisory bodies of the EU subsidiaries or with the person(s) responsible for carrying out the disclosure formalities[9] for EU branches. In these cases, as the report would not have been drawn up by them, their responsibility would be limited to making sure that, to the best of their knowledge and ability, the report has been prepared and published according to the reporting requirements.

Companies subject to the publication requirement would have to submit the report to their external statutory auditors who would check that the report has been presented in accordance with the Directive, and made accessible on a website.

26. How would the process be enforced at national level?

In case of non-compliance, the penalties already provided in the Accounting Directive would apply. National competent authorities or courts would be entitled to impose fines on companies. These penalties would have to be effective, proportionate and dissuasive. In the case of non-EU multinational enterprises, penalties could fall on all of their EU medium-sized or larger subsidiaries; or on their EU branches.

27. What are the next steps?

The proposal is now submitted to the European Parliament and Council for their consideration and final adoption by qualified majority of the Council. Once adopted, the new Directive would have to be transposed into national legislation by all EU Member States, within one year after its entry in force.

28. What more can be done to enhance tax transparency?

The 4th Anti-Money-Laundering Directive already sets standards to bring about more transparency and accountability for companies and banks, making sure that competent authorities have access to relevant information through central registers. The Directive has introduced in particular an obligation for Member States to introduce public registers on beneficial ownership. It is now essential that Member States rapidly transpose these commitments in their national legal order. The Commission is currently revising this Directive, with a view to present a proposal under the Dutch Presidency. This revision will primarily aim at addressing risks posed by terrorist financing, but it could also be considered whether additional measures to strengthen the framework are necessary.

The Commission will also explore whether EU rules around financial advice may need to be strengthened to provide stronger disincentives for financial intermediaries as regards customer advice that may lead to tax evasion.

[1] COM (2015) 610 final of 27 October 2015 and COM (2014) 910 final of 16 December 2014.

[2] Bringing transparency, coordination and convergence to corporate tax policies in the European Union, I — Assessment of the magnitude of aggressive corporate tax planning' prepared by Robert Dover, Dr Benjamin Ferrett, Daniel Gravino, Professor Erik Jones and Silvia Merler.

[3] IP/15/5780

[4] IP/16/159

[5] European Commission, Factual Summary of the responses to the public consultation on assessing the potential for further transparency on corporate income taxes, January 2016.

[6] SYNOPSIS REPORT

[7] To be considered as medium-sized or large, a company must exceed two of the following criteria: net turnover of EUR 8 million (up to EUR 12 million depending on the Member State), balance sheet of EUR 4 million (up to EUR 6 million depending on the Member State), and 50 employees on average. For branches, turnover is the sole size criterion.

[8] Egger, P., W. Eggert and H. Winner (2010), 'Saving Taxes through Foreign Plant Ownership', Journal of International Economics 81: 99–108; Finke, K. (2013), Tax Avoidance of German Multinationals and Implications for Tax Revenue Evidence from a Propensity Score Matching Approach, mimeo.

[9] as provided for in Directive 89/666/EEC .

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