

Insurance Europe comments on the OECD Discussion Draft on Transfer Pricing Documentation ("TPD") and Country by Country Reporting ("CbCR")

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Contact person:	Daniel Madejski, Policy Advisor, Taxation	E-mail:	madejski@insurancееurope.eu
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Summary

Insurance Europe supports the OECD's efforts to enhance transparency towards tax authorities, on the basis of the principle of disclosure of information, in order to enable tax authorities to get a better view of multinational groups as a whole.

This being said, Insurance Europe believes that the objectives of improving transparency and of reducing the compliance burden for business should both be at the very heart of this initiative. With respect to the compliance burden, the OECD should take account of all existing reporting requirements that Multi-National Entities ("MNEs") face and the information tax authorities currently have before imposing new reporting requirements on insurance companies.

The draft CbCR template was designed to provide tax authorities with relevant information in order to conduct an efficient risk assessment. Insurance Europe believes that the level of detail proposed in the draft goes beyond this objective and is concerned that this will significantly increase the compliance burden and costs faced by insurance companies.

It is Insurance Europe's strong view that the OECD should permit flexibility in compiling the CbCR template in a number of respects. In particular, the insurance sector should be given flexibility in: (1) using either a "bottom-up" or a "top-down" approach in their CbCR template; (2) disclosing aggregate financial information on an entity or country basis, and (3) preparing their master file on a group-wide or business line basis. Insurance Europe believes that granting such flexibility would decrease the compliance burden of insurance sector while still enabling tax authorities to conduct efficient risk assessment.

Insurance Europe upholds that in developing TPD standard to combat tax avoidance, a global standardised solution is needed, given that tax avoidance is a global issue. As such, any measures addressing this issue

should also have a global reach. National and/or regional tax information rules lead to duplicate reporting, excessive costs and complex system designs for tax authorities and insurance companies alike and should therefore be avoided as much as possible.

It should be stressed that this risk of overlapping and inconsistent reporting requirements is real, as there are currently a number of ongoing initiatives in the area of CbCR. For instance, in addition to the OECD proposal, the European Parliament has recently proposed to consider the introduction of CbCR to large undertakings when reviewing the accounting directive in 2018¹. For instance, in addition to the OECD proposal, the European Parliament² has recently proposed to introduce CbCR for large undertakings. Ensuring consistency between these different initiatives should be a priority for all policy makers involved in these discussions.

Insurance Europe believes that confidentiality needs to be maintained. It has to be noted that the proposed CbCR template containing detailed group-wide information will be disclosed to all countries with different level of data protection. In our view, in order to ensure confidentiality of data the information should not be distributed to local tax authorities unless it is relevant the local tax position. This being said, it is important the CbCR is delivered as a separate document. We comment below on the questions put forward in the OECD Discussion Draft.

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Specific Comments

1. Comments are requested as to whether work on BEPS Action 13 should include development of additional standard forms and questionnaires beyond the country-by-country reporting template. Comments are also requested regarding the circumstances in which it might be appropriate for tax authorities to share their risk assessment with taxpayers.

Insurance Europe believes that the OECD should not seek to develop additional standard forms and questionnaires beyond the CbCR template. In our view, the OECD should only consider additional standard forms and questionnaires only if the CbCR template proves to be unworkable and not does to meet its objectives.

In our view sharing risk assessment with tax authorities with taxpayers would be a good practice. From a practical point of view, sharing risk assessment would allow MNEs to tailor local documentation, allowing for more efficient risk based focus. Furthermore, sharing the risk assessment may prevent tax authorities from initiating an audit procedure in case where the taxpayer could easily explain the tax authorities' concerns.

2. Comments are specifically requested on the appropriate scope and nature of possible rules relating to the production of information and documents in the possession of associated enterprises outside the jurisdiction requesting the information.

¹ European Parliament's Legal Affairs Committee (JURI) report on the EC proposal for a Directive on disclosure of non-financial and diversity information by certain large companies and groups.

Insurance Europe recognises that tax authorities require access to relevant information in order to conduct transfer pricing audits and risk assessments. This should however be achieved without imposing an unnecessary burden on the insurance sector. In particular, in case tax authorities request specific information which a local entity does not have a direct access to, tax administrators should exploit existing instruments, such as information-exchange mechanisms, in order to obtain the information from associated entity located outside their jurisdiction.

It should be noted that often within an insurance group transfer pricing compliance is organised in a decentralised way, meaning that it is the competence of local entities to comply with transfer pricing obligations and there is no entity that has a comprehensive view of all transfer pricing information across the group.

3. Comments are requested as to whether preparation of the master file should be undertaken on a line of business or entity wide basis. Consideration should be given to the level of flexibility that can be accommodated in terms of sharing different business line information among relevant countries. Consideration should also be given to how governments could ensure that the master file covers all MNE income and activities if line of business reporting is permitted.

Insurance Europe believes that flexibility should be granted to entities in providing the information on a line of business or entity wide basis.

It is not uncommon for insurance groups to operate on a line of business basis, with segmentation of operations between, inter alia, life insurance, non-life insurance, reinsurance, investment management and other financial services/products. In consequence, transfer pricing models vary per business activity. For instance, the value chains of a reinsurer differ significantly from the value chains of an asset manager, even though both entities are part of the same insurance group.

Therefore, the preparation of global information on a group-wide basis and not per line of business may not be straightforward. This may result in a master file document that is large and complex for businesses to prepare and unhelpful for tax authorities faced with an excess of potentially irrelevant data.

On the other hand, some insurance groups may focus on a particular line of business, in which case it would be easier to prepare their master file on a group-wide basis.

4. A number of difficult technical questions arise in designing the country-by-country template on which there were a wide variety of views expressed by countries at the meeting of Working Party n°6 held in November 2013. Specific comments are requested on the following issues, as well on any other issues commentators may identify:

4.1. Should the country-by-country report be part of the master file or should it be a completely separate document?

We believe that the CbCR report should be a stand-alone document, which is separate from the master and local file of TP documentation. The CbCR report and the TP documentation serve different purposes, and may be subject to different filing timelines and materiality standards. Therefore, keeping the two documents separate would help streamline both taxpayer compliance and the administration of the reported information by the tax authorities.

Furthermore, the proposed CbCR template would contain detailed group-wide information that is generally not available to local entities. It is also likely to contain confidential information that should not be distributed to local tax authorities automatically unless it is relevant to the local tax assessment

4.2. Should the country-by-country template be compiled using “bottom-up” reporting from local statutory accounts as in the current draft, or should it require (or permit) a “top-down” allocation of the MNE group’s consolidated income among countries? What are the additional systems requirements and compliance costs, if any, that would need to be taken into account for either the “bottom-up” or “top-down” approach?

Insurance Europe believes that taxpayers should be given the flexibility of using either a “bottom-up” or a “top-down” approach in their CbCR. Insurance companies are organised in different ways and use different systems to report financial information both internally and externally.

Having regard to the fact that the purpose of the CbCR template is to provide a high level tax risk assessment within a particular MNE, it should be flexible enough to the usage of the most meaningful data compiled in the most effective way possible for each MNE. Any cost and burden associated with the preparation of the CbCR template should be commensurate with its purpose as a high-level risk assessment tool, and significant systems changes and updates should, as much as possible, be avoided. Therefore, any information to be provided should be based as far as possible on already available data. Imposing one approach would impose significant, additional compliance costs without necessarily helping tax authorities when carrying out a high level risk assessment.

4.3. Should the country-by-country template be prepared on an entity by entity basis as in the current draft or should it require separate individual country consolidations reporting one aggregate revenue and income number per country if the “bottom-up” approach is used? Those suggesting top-down reporting usually suggest reporting one aggregate revenue and income number per country. In responding, commenters should understand that it is the tentative view of WP6 that to be useful, top-down reporting would need to reflect revenue and earnings attributable to cross-border transactions between associated enterprises but eliminate revenue and transactions between group entities within the same country. Would a requirement for separate individual country consolidations impose significant additional burdens on taxpayers? What additional guidance would be required regarding source and characterization of income and allocation of costs to permit consistent country-by-country reporting under a top-down model?

Insurance Europe believes that taxpayers should be given the option of disclosing aggregate financial information on an entity or country basis.

Some groups have hundreds or even thousands of entities and some level of country consolidation is likely to be required to ensure that the volume of data is manageable and so that the information is useful for tax authorities’ high level risk assessments. Furthermore, CbCR on an entity-by-entity basis could result in a significant compliance burden, especially for those taxpayers who have limited financial information readily available on an individual entity basis such as partnerships or trusts.

On the other hand, for smaller groups preparing the information on an entity basis may be more manageable and useful. Therefore, it is essential that flexibility is permitted.

4.4. Should the country-by-country template require one aggregate number for corporate income tax paid on a cash or due basis per country? Should the country-by-country template require the reporting of withholding tax paid?

Insurance Europe believes that the aggregate corporate income tax paid by country should be collected on a "tax due basis". The collection of cash tax paid for the period may not present the full picture for risk assessment purposes. This is especially important for the insurance industry where timing differences between income for accounting and taxation can be significant. Furthermore, many jurisdictions have a different basis of taxation, such as tax on gross premiums, capital employed or investment income. Where these taxes are imposed in lieu of regular corporate income taxes, these taxes should be included in the relevant CbCR.

4.5. Should reporting of aggregate cross-border payments between associated enterprises be required? If so at what level of detail? Would a requirement for reporting intra-group payments of royalties, interest and service fees impose significant additional burdens on taxpayers?

Keeping in mind that the CbCR template is intended to be a high level risk assessment tool, in our view there is no need to include intra-group payments of royalties, interest and service fees. Reporting on intra-group payments goes beyond the original idea of providing a high level risk assessment for tax authorities.

Furthermore, reporting on intra-group payments would significantly increase the administrative burden since intra-group payments will already be included in the transfer pricing documentation (master file and local file).

As a result, groups with many entities would be required to report thousands of separate transactions, in multiple local currencies and multiple local accounting principles (GAAPs).

4.6. Should the country-by-country template require reporting the nature of the business activities carried out in a jurisdiction? Are there any features of specialist sectors that would need to be accommodated in such an approach? Would a requirement for reporting the nature of the business activities carried out in a jurisdiction impose significant additional burdens on taxpayers? What other measures of economic activity should be reported?

Insurance Europe believes that it is not necessary to report on the business activities at entity level. The business activity codes included in the draft CbCR template instructions already provide sufficient information for tax authorities as part of its high-level risk assessment.

Providing such information at entity level would be onerous, as the information would have to be extracted manually from accounts, and it would not seem to enhance the understanding of the operations as a whole.

5. Comments are requested as to whether any more specific guideline on materiality could be provided and what form such materiality standards could take.

Insurance Europe believes that materiality thresholds should be provided in order to ensure effective risk assessment and to reduce the compliance burden on businesses.

Furthermore, as preparing transfer pricing documentation is time consuming and expensive, special consideration should be given to small and medium sized groups. Such groups should not be required to incur compliance costs that are disproportionate to the nature, scope and complexity of their intra-group transactions.

There are a number of ways to achieve it, for instance a combination of:

- Excluding small entities from the MNE group, such as for instance entities representing less than 5% of the total, to the extent that such entities are not material to the country where they operate.
- Considering transaction amounts as a specific monetary threshold.

6. Comments are requested regarding reasonable measures that could be taken to simplify the documentation process. Is the suggestion in paragraph 34 helpful? Does it raise issues regarding consistent application of the most appropriate transfer pricing method?

The comments in paragraph 34 are moving in the right direction, but further simplification and more flexibility would be helpful.

There should be a harmonisation of local documentation requirements (local files). With the introduction of the CbCR template, there should be an attempt to remove any unnecessary or duplicative filings, such as tax return disclosures.

Furthermore, the listed information in the specific instruction of the draft CbCR template should be defined more precisely and accompanied by detailed explanations.

7. Comments are requested regarding the most appropriate approach to translation requirements, considering the need of both taxpayers and governments

The suggestion in paragraph 35 of the Discussion Draft seems sensible. Using a common language, such as English, for the master file will simplify compliance. As the costs associated with translations can be burdensome we strongly support the suggested approach of having this document translated only if necessary into the local language(s), ensuring that sufficient time is available for the translation to be completed. If there is a need to translate into multiple languages, then the content in the master file needs to be kept as simple as possible.

The CbCR template should be issued and completed in English and the local country files in local language.

8. Comments are requested as to measures that can be taken to safeguard the confidentiality of sensitive information without limiting tax administration access to relevant information.

Confidentiality is essential. The supplied documents will contain extremely sensitive information that tax authorities must protect from disclosure. Protection requires, at a minimum, that the template be maintained by the home country of the ultimate parent and be available under exchange of information provisions of tax treaties (or other exchange of information provisions in other agreements).

9. Comments are requested regarding the most appropriate mechanism for making the master file and country-by-country reporting template available to relevant tax administrations. Possibilities include:

- The direct local filing of the information by MNE group members subject to tax in the jurisdiction;
- Filing of information in the parent company's jurisdiction and sharing it under treaty information exchange provisions;
- Some combination of the above.

In Insurance Europe's view, the master file for the purpose of reporting should be submitted only in the parent company's jurisdiction. Information to other local tax authorities should only be shared under treaty or information exchange agreements. These provisions can provide protection of confidentiality from inappropriate use of information.

10. Comments are specifically requested as to whether reporting of APAs, other rulings and MAP cases should be required as part of the master file.

The master file should only contain information that is relevant in helping tax authorities get a better understanding of intra-group transactions that are included in the local files.

APAs, other rulings and MAP cases are all specific to certain transactions and across particular jurisdictions within a group. As such they will only be relevant to certain tax authorities.

To include sufficient information on APAs, rulings and MAP cases allowing tax authorities to determine whether they are relevant for their own risk assessment purposes would require the disclosure of a substantial amount of information, which would further increase the compliance burden. The more sensible approach would be for tax authorities to undertake their own high-level risk assessment and then to ask for more detailed information as regards areas which are of concern to them.

Insurance Europe therefore believes that details of APAs, rulings or MAP cases should only be provided if they are relevant to a tax authority.

11. Other comments on the CbCR Template

Insurance Europe would like to put forward the following additional comments on the requirements of the CbCR template:

- Timeframe

The OECD should propose a sensible timetable for implementation. Since the CbCR template encompasses the entire group, MNEs would be potentially exposed to an unreasonable and unrealistic global reporting commitment timetable if one relevant jurisdiction chose to implement the CbCR template significantly in advance of other governments.



We agree that the most appropriate completion date for the country-by-country template should be 12 months following the year end date of the parent company.

- Effective Management

“Effective Management” should be replaced by “Tax Residence” as this is a more commonly understood concept.

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