

Insurance Europe response to the European Commission consultation on further corporate tax transparency

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Answers and comments relating to consultation questions

Question 1: *In terms of corporate tax transparency, which of the following assertions would you support?*

Answer c: The EU should implement international initiatives (e.g. BEPS...) at the same pace and to the same extent as its global partners in order to ensure a level playing field.

Even though the insurance industry believes that current transparency requirements are sufficient, in the current context the EU should focus on implementing international initiatives (like BEPS) at the same pace and to the same extent as other non-EU jurisdictions. A competitive disadvantage would otherwise exist, which would be harmful for future investments in the EU.

Question 2A: *Do you agree with the following objectives?*

Objective 3 would be appropriate: To assist tax authorities in orienting their tax audits in view of targeting tax evasion or avoidance, i.e. business decisions whereby tax liabilities are circumvented ("help tax authorities orientate their audits on enterprises"). Don't support any objective apart from objective 3.

Question 2B: *Would you add other objectives, and if so, which ones?*

Insurance Europe would like to make it clear that the insurance industry is fully supportive of tax transparency. Whilst several of the objectives proposed here are laudable (such as "Member States should stop harmful tax competition", "help tax authorities orientate their audits on enterprises" and "fairer competition between multinational enterprises and SMEs"), the insurance industry believes that they are focused on a small number of companies which are engaged in aggressive tax planning rather than on the vast majority of companies which are not. This is why Insurance Europe supports only Objective 3 in this list. In Insurance Europe's view, a more appropriate objective might be to ensure companies pay tax on all their corporate profits in the Member State in which the profits are attributable. Insurance Europe would also add that the insurance industry is heavily regulated and that existing regulation places a natural limit on BEPS activity.

Question 3: *The following options have been identified by the Commission services. In your opinion, which would be the most appropriate option?*

- OPTION A: No EU Action
- OPTION B: Implementation of BEPS 13 at EU level
- OPTION C: Publication of anonymised/aggregated data by the EU tax authorities
- OPTION D: Public disclosure of tax-related information by enterprises
- OPTION E: Publicly available corporate tax policies

Insurance Europe believes the most appropriate would be **Option B: Implementation of BEPS 13 at EU level** - The EU would recommend or require, as recommended by BEPS 13, that enterprises disclose tax-related information on a country-by-country basis to the relevant tax authorities. Each ultimate parent enterprise filing a tax return with any of the relevant EU tax authorities would be covered. Its own worldwide consolidated operations would be reported.

Insurance Europe believes that the OECD's recommendations in this area (Action 13) should first be implemented by Member States' governments (most if not all Member States are members of the OECD and will be implementing the BEPS 13 outcome). Only then it will be possible to understand how those proposals address existing concerns and thus draw any conclusions.

The following questions relate to applying Option B only:

Question 4: *What information should be necessarily disclosed by enterprises to the tax authorities?*

Answer a: Enterprises should disclose to tax authorities the information required in BEPS Action 13 (Name, Nature of activities, Location, List of subsidiaries of the parent enterprise operating in each country, Revenue, Revenues split between related and unrelated parties, Number of employees, Profit or loss before tax, Income tax paid and accrued, Stated Capital, Accumulated earnings, Tangible assets).

Question 5: *What EU entities should be covered?*

Answer a: Very large enterprises with revenue of EUR 750M or larger enterprises + (as recommended in the BEPS 13)

Question 6A: *How would you assess the extent to which enterprises will need to change their tax planning or structure as a result of being more transparent towards tax authorities?*

Answer a: This will have no effects on enterprises' tax planning. The OECD's recommendations in relation to Action 13 (i.e. CBCR submission to the tax authorities) seem sensible and appropriate, as the information will show obvious anomalies and – along with other information available - will enable tax authorities to undertake a risk assessment in order to determine whether profits are being shifted from their country of origin. Given that the insurance industry is subject of regular scrutiny, ranging from real time working to tax audits, Insurance Europe does not expect that BEPS will materially alter the industry's tax planning strategies.

Question 7: *What consequences would further tax transparency towards tax authorities have in terms of public finance?*

Answers c, d and f: Decrease in tax paid in Europe, increase in tax paid outside the EU as well as other effects. There are too many different interactions which make the impact on public finances too difficult to predict. Public finances could be impacted in a number of different ways. However, it is possible that a number of countries will try to use the information obtained from the country-by-country report in order to increase

the taxation of companies active on their territory. This might then lead to a loss in tax revenue in European Member States. Furthermore, it must be feared the risk of double taxation would increase and that this risk would be accepted by the countries in question. Another effect might be a diversion of future investments by non-EU companies away from the EU. Such companies might prefer to invest in jurisdictions where the compliance burden is less (i.e. decreased cost of doing business).

Question 8: *Can you provide an estimation of any additional costs and resources that will be incurred by enterprises in preparing a consolidated CBCR in accordance with BEPS 13?*

Companies' internal preparations to produce a country-by-country report are still at an early stage. Therefore, a detailed calculation of the expected costs is at present not possible. However, it is already a certainty that significant additional costs will be incurred when complying with the upcoming new requirements, since several requested information items are currently not readily available. The currently unavailable data include, inter alia, Income tax paid (on cash basis) and Income Tax accrued – current year. Moreover, in many cases, the required information is currently only available on the level of legal entities but not for every permanent establishment. Some insurance groups are commercially organised by primary reference to business lines and not by reference to geography. Hence, CbCR requires a local geographical consolidation of figures not actually required for any other form of reporting. Therefore, CbCR brings significant additional administrative burdens between headquarter and local business operations. This comes at a point in time when companies are already spending vast resources on preparations and implementations of other reporting requirements (like Solvency II or IFRS 4 Phase II).

Question 9: *What consequence would tax transparency towards tax authorities have in terms of fostering a growth friendly environment and the attractiveness of the EU as a place to invest?*

Answer d: No opinion. Assuming that tax authorities will use the information in the manner that is intended, namely as a risk assessment tool, it may be the case that these further measures would contribute positively to the EU's attractiveness and foster a growth friendly environment. However, Insurance Europe fears that tax authorities may use the additional information collected inappropriately and that this would lead to raised tax assessments, increased compliance costs and less regulatory certainty for business. All of this would negatively impact investment into the EU, as non-EU companies will have second thoughts about investing in Europe. The risk of this happening would only be mitigated by the EU adopting BEPS at the same pace and to the same extent as its global partners in order to ensure a level playing field. Only if this happens, a positive effect can ensue; businesses would then be certain that they will not be the subject of inappropriate enquiries from tax authorities leading to increased compliance costs. This would indeed be favourable for growth and increase the EU's attractiveness.

The following questions relate to applying Options C and D only:

Question 10: *How would you describe the potential benefits / disadvantages of a public disclosure of information by enterprises as compared to disclosure towards tax authorities only?*

Insurance Europe sees no advantages in public disclosure of country-by-country information. A meaningful interpretation of this complex and aggregated data requires in-depth knowledge of tax law that can only exist within a fiscal administration. A public disclosure could in some circumstances lead to misinterpretations and to unjustified claims and accusations against the companies concerned. The above limitations are precisely why the OECD BEPS proposals for the data are focussed on its use for risk assessment for planning audits rather than having determinative value in and of itself.

Question 11: *What information would it be absolutely necessary to include in a publicly available CBCR (option D)?*

Answer r: None. Insurance Europe does not see any benefits of a publicly-available country-by-country report for the reasons explained under Question 10. We believe that any deviation from the principles agreed at OECD level risks creating an unlevel playing field for European companies, as their compliance burden will be increased. Therefore, a coordinated and consistent approach is essential to the principle of CbCR. Placing EU-based companies on an unlevel playing field compared to their competitors could dampen European competitiveness and undermine the EU investment strategy focused on job creation and growth. Furthermore, whilst we do not see the benefit of public disclosure, given this additional compliance burden and costs, if the conclusion of this consultation is in favour of public disclosure of country-by-country reports, then the information to be published should be exactly the same as that required under BEPS Action 13.

More particularly, regarding the automatic exchange of tax rulings, although the insurance industry is committed to tax transparency, it also has the following concerns:

- **Scope:** In the Commission's legislative proposal, the definition of the tax rulings to be exchanged is extremely broad (tax returns and tax audit conclusions would fall under its scope). In our view, this would make the proposal disproportionate to its objective and very burdensome for both businesses and tax authorities to implement, given the high volume of documents which would need to be processed. We would suggest that it would be more sensitive, as a first step, to identify what constitutes a "harmful" ruling and request disclosure of such rulings only.
- **Counterparties:** According to the Commission's proposal, the tax rulings information is to be communicated to all EU member states as well as to the Commission. Insurance Europe doesn't see any compelling reason for which the exchange of information is not limited to the member states directly concerned by the tax ruling considered harmful. Tax rulings contain sensitive commercial data and sharing them with all member states and the Commission would be disproportionate. In some cases, the mere knowledge of a ruling being issued relating to certain parties can reveal sensitive information, especially with regard to planned business activities or transactions such as mergers and acquisitions. Insurance Europe therefore strongly argues in favour of limiting the automatic exchange of information to the affected member states.
- **Confidentiality:** Insurance Europe welcomes the fact that the European Commission has not proposed to make all rulings public as this avoids misuse of published information. Insurance Europe would point out though that the confidentiality regime which is foreseen to apply to information exchanged is that of the receiving member state. This is, in Insurance Europe's view, insufficient, given that not all member states apply a strict tax secret.
- **Unintended consequences:** The risk of disclosing commercial and industrial secrets would deter businesses from applying for advance rulings. Informal agreements with tax administrations might be encouraged, which is a less transparent option than formal advance rulings. As a result, the proposal could result in less transparency, which is contrary to the purpose of the proposal. In addition, if companies resort less to advance tax rulings, they will be less able to assess complex tax and legal matters prior to making an investment. This increased uncertainty could have a negative impact on cross-border investment and trade within the EU.

Question 12: *In the case of tax authorities publishing aggregated/anonymised information based on returns filed by enterprises with them (OPTION C), what information should be provided by those authorities (on a country-by-country basis)?*

Answer h: None. The information mentioned in answers a through g would be less relevant to the public. It might instead be appropriate to publish the number of CbCR reports received by tax authorities as a means of building public confidence in tax authorities, business and the international tax system.

Question 13: *Would you or your organisation have an interest in receiving further corporate tax-related information (detailed or aggregated)?*

No

Question 14: *What entities should be covered?*

14A – Size. Answer c: Other. The OECD's recommendations in relation to Action 13 (i.e. CBCR submission to the tax authorities) seems sensible and appropriate, as the information will show obvious anomalies and – along with other information available - will enable tax authorities to undertake a risk assessment in order to determine whether profits are being shifted from their country of origin. Therefore, no further businesses should be required to provide information publicly.

14B – Connection with EU markets. Answer e: No opinion

Question 15: *What operations should be covered?*

Answer d: Other. The OECD's recommendations in relation to Action 13 (i.e. CBCR submission to the tax authorities) seems sensible and appropriate, as the information will show obvious anomalies and – along with other information available - will enable tax authorities to undertake a risk assessment in order to determine whether profits are being shifted from their country of origin. Therefore, no further businesses should be required to provide information publicly.

Question 16: *Considering that the EU may have stricter rules on tax transparency towards the public than other countries, is there a risk of placing enterprises established/listed in the EU at a competitive disadvantage vis-à-vis non-EU multinational companies operating in the EU?*

Answer: Yes. The country-by-country report contains details down to the country-level of competitively important and company-specific data which would otherwise not be generally accessible. Because of the resulting information asymmetry, public disclosure of this information would cause significant competitive risks for companies established in the EU vis-à-vis non-EU multinational companies operating in the EU. Therefore, the considerable additional administrative burden has to be seen as harmful for competition. This risk can be avoided only by waiving a public disclosure.

Question 17: *Is there a risk that tax transparency towards the public could have other unintended negative consequences on companies?*

Answer: Yes. A meaningful interpretation of the complex and aggregated data requires in-depth knowledge of tax law that can only exist within a fiscal administration. As such, a public disclosure could in some circumstances lead to misinterpretations and to unjustified claims and accusations against the companies concerned.

Question 18: *Would you expect measures for enhanced public transparency on tax information in the EU to have an impact on relations with third countries (Developing countries, OECD members)?*

An increased risk of tax challenges and double (or more than single) taxation as identified in Question 7 would imply that relations with third countries will be impacted by additional tax disputes and cases of arbitration.

Question 19A: *How would you assess the extent to which enterprises will need to change their tax planning following further tax transparency towards the public?*

Answer a: This will have no effects on enterprises' tax planning. The public disclosure of a country-by-country report would not impact the tax planning of companies, as they already have to be compliant with existing legal requirements. On the other hand, as already stated, the variety of information contained in such a public disclosure could in some circumstances lead to misinterpretations and to unjustified claims and accusations against the companies concerned.

Question 20: *What additional effect, if any, on public finance would tax transparency towards the public have in addition to transparency for tax authorities only?*

Answers c and d: Decrease in tax paid in Europe and Increase in tax paid outside the EU. Public disclosure on tax could act as a deterrent in attracting investment from outside the EU.

Question 21: *What consequence would tax transparency towards the public have in terms of fostering a growth friendly environment and the attractiveness of the EU as a place to invest?*

Answer c: Hamper the fostering of a growth friendly environment and negatively impact the attractiveness of the EU as a place to invest.

Question 22: *Should the information prepared by enterprises be specifically verified by an independent assurance service provider (e.g. an auditor)?*

Answer a: No, the information should not be verified.

Question 23: *Should there be additional safeguards in terms of specific rules for the protection of data and business secrets?*

Answer a: Yes.

Question 24: *Please estimate additional costs and resources entailed by the introduction of further transparency measures for enterprises compared to an implementation of OECD BEPS Action 13 at national level and identify information which is not currently available.*

Companies' internal preparations to produce a country-by-country report are still at an early stage. Therefore, a detailed calculation of the expected costs is at present not possible. However, it is already a certainty that significant additional costs will be incurred when complying with the upcoming new requirements, since several requested information items are currently not available. The currently unavailable data include, inter alia, *Income tax paid (on cash basis)* and *Income Tax accrued – current year*. Moreover, in many cases, the required information is currently only available on the level of legal entities but not for every permanent establishment. CbCR brings significant additional administrative burdens between headquarter and local business operations. This comes at a point in time when companies are already spending vast resources on preparations and implementations of other reporting requirements (like Solvency II or IFRS 4 Phase II). Furthermore, whilst we do not see the benefit of public disclosure, given the additional compliance burden and costs, if the conclusion of this consultation is in favour of public disclosure of country-by-country reports, then the information to be published should be exactly the same as that required under BEPS Action 13.

Question 25: *Would you support a mandatory description of tax management policies by enterprises?*

Answer c: No

Question 26: *Is there anything else you would like to bring to the attention of the Commission?*

Insurance Europe's response to this consultation can be summarised as follows: the target of EU action is aggressive tax planning, harmful tax regimes and tax fraud. These matters may be facilitated by lack of transparency but are driven by inadequacies in international tax legislation that has not kept pace with globalisation. For this very reason, the OECD is now driving the BEPS project towards finalisation; the EU should focus on ensuring that the corresponding legislative implementation of BEPS will be coordinated and will not lead to further unilateral differentiation amongst its member states. Working towards a greater degree of harmonisation and producing practical guidance and tools to enable implementation would be far more

effective than reporting CbCR information to the public. There is no need for the EU to introduce additional transparency requirements that go beyond BEPS. This would not combat aggressive tax planning, harmful tax regimes and tax fraud but will indeed harm the competitiveness of the EU region.

European tax authorities could deal more effectively with tax transparency by having “real time” tax audit in which matters are constructively discussed as they occur, rather than many years after. This would build trust between taxpayers and tax authorities, bring about constructive behaviour and discourage abusive tax planning. Business places a premium on certainty. The Commission should also not lose sight of the fact that one of the best methods of eliminating tax abuse is for the tax regime to be straightforward, with a broad base and a comparatively low rate, therefore minimising loopholes and discouraging profit shifting.

Insurance Europe would like to point out that the consolidated financial statements of listed companies comply with IFRS requirements which aim to meet the needs of investors and other suppliers of capital; in this case, the necessary comparability of reporting bases is achieved. IFRS have presentation and disclosure requirements that generally correspond to a number of the CBCRs. The level of detail given in IFRS-based accounts (e.g. effective tax rate disclosures according to International Accounting Standard (IAS) 12 on Income Taxes) is oriented to meet investor needs and it is important that there is consistency in financial reporting at a global level. Insurance Europe therefore considers it generally more appropriate for changes to financial reporting to be made through changes to the International Accounting Standards Board’s (IASB) IFRS requirements.

Insurance Europe would also like to point out that Article 48 of the Accounting Directive 2013/34/EU mandates the European Commission to review the existing scope of CbCR and to provide a related report to the European Parliament and the Council until 21 July 2018. The European Parliament, Council and Commission have just recently reconfirmed the need for this review before taking further steps in the Directive on non-financial disclosures 2014/95/EU of 22 October 2014 (Corporate Social Responsibility (CSR) Directive). The outcome of this CbCR review should not be anticipated and the existing political agreement in this sense should not be overwritten.

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe’s economic growth and development. European insurers generate premium income of almost €1 170bn, employ over one million people and invest nearly €9 900bn in the economy.