COUNTRY-BY-COUNTRY REPORTING: *HOW RESTRICTED ACCESS EXACERBATES GLOBAL INEQUALITIES IN TAXING RIGHTS*

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Abstract. Fully public country-by-country reporting would enable a dramatic shift in the accountability of both multinationals and tax jurisdictions. Estimates of the losses due to tax avoidance imply that lower-income countries would benefit disproportionately, as this transparency would offer powerful leverage against the current, highly unequal global distribution of taxing rights over multinationals. The OECD's welcome adoption of the Tax Justice Network's original proposal is, however, critically undermined by the decision to impose multiple limits on access to the data. This paper explores these limits, and demonstrates how the resulting unequal access is likely to exacerbate, rather than ameliorate that inequality in taxing rights. A range of proposals is put forward for progressive steps by various actors, including multinationals themselves.

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INTRODUCTION

Country-by-country reporting (CBCR) involves the provision of data by multinational companies describing their operations in every country: names and locations of each entity, along with aggregate information on the scale of activity (e.g. tangible assets, turnover, employee numbers), profits declared and tax paid, in each jurisdiction.[1]

The Tax Justice Network (TJN) has, since its establishment in 2003, led the way in developing and promoting the idea of public CBCR. The Financial Transparency Coalition (FTC) has championed public CBCR since its inception in 2009, as have many FTC members including Christian Aid and TJN-Africa. There are now multiple CBCR requirements on multinational companies, depending on the jurisdiction and industry sector (e.g. extractives and banking have specific requirements for fully public data in the EU).

The G20 and G8 groups of countries in 2013 directed the OECD to produce a CBCR standard as part of its work on combating multinational tax avoidance, the Base Erosion and Profit Shifting (BEPS) Action Plan. This will require all multinationals of a certain scale to adhere to a specific CBCR standard, drawing closely on the original TJN proposal. However, the data will not, at present, be made public. Instead, reporting will take place privately, and only to the tax authority in each multinationals' headquarters country.

This report explores the limitations on access that the OECD has created, and their practical implications. As context, it is useful to consider the nature of the argument for CBCR, and the domestic and international inequalities to which it responds.

CBCR is an accountability tool above all else. The case for CBCR is that it provides additional, public information on the location of the activities of multinational companies, which in turn improves accountability in a range of ways. First among these is tax. Multinationals can be held to account against the single, global aim of the BEPS process, of improving the alignment between where their economic activity takes place, and where taxable profit is declared. Openness of CBCR to tax authorities allows measures of misalignment to be easily calculated, in order to identify the major tax risks. Openness of CBCR to the *public* allows media, researchers and civil society activists to hold tax authorities to account – for example, it would have to identified the nature of Luxembourg's poaching of other countries' tax bases long before LuxLeaks revealed the details; and allows investors and market analysts to identify the related risks and so price multinationals more efficiently.[2]

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[1] We are grateful for comments from colleagues and from FTC members, including Matti Kohonen.

[2] Recent research (Brooks *et al*., 2016) suggests that for UK-listed firms at least, a lower effective tax rate does not translate into higher shareholder returns. It does, however, expose shareholders to greater risk – so the benefits are captured inside the company, while costs are imposed on both public revenues and on shareholders. A quite different analysis finds that US banks impose higher interest rates and harsher non-interest terms on firms with a greater degree of tax avoidance – indicating that banks too perceive higher associated risks (Hasan *et al*., 2014). A recent major investor call for public CBCR can be seen here: http://www.nytimes.com/2016/09/21/opinion/how-companies-like-apple-dodge-taxes-and-their-own-investors.html.

CBCR is therefore a transparency measure that genuinely shifts power and drives greater accountability in multiple channels. Those accountability channels can address a range of unequal power relations: from the principal-agent issues that may face investors in opaque, tax-avoiding multinationals, to the gross inequality that faces lower-income countries in the distribution of taxing rights on multinationals. A survey of recent estimates (Cobham, Janský & Loretz, 2016) notes the consistent finding that most countries lose out to tax avoidance, and just a handful benefit at the expense of all others – chief among them, the Netherlands, Ireland, Luxembourg, Switzerland and Bermuda. Cobham & Gibson (2016) show that estimates of tax losses published by researchers in the IMF's Fiscal Affairs department (Crivelli et al., 2015) imply costs of 2-3 per cent of tax revenue for OECD countries, but 6-13 per cent for developing countries.

Fully public CBCR data would represent a paradigmatic example of transparency for accountability, where openness becomes a tool for meaningful challenge to injustice.[3] At present, however, the OECD has imposed severe restrictions on access to the data – creating a risk that the inequalities in taxing rights faced by lower-income countries may actually be exacerbated, rather than ameliorated.

After sustained lobbying by US multinationals among others, the OECD rejected public CBCR in favour of private reporting to tax authorities. It then went much further. First, only headquarters country tax authorities – i.e., typically those of OECD countries – are to receive CBCR data directly. Second, that data can only be shared with other (e.g. lower-income country) tax authorities where certain criteria are met, and with major limitations to the use to which the data can be put.

In this report we explore the practical implications of these restrictions, with a focus predominantly on the access of lower-income countries. The first section assesses the extent to which arrangements for automatic exchange of information will enable access to CBCR data. The second section explores the scope for non-headquarters countries to impose their own direct filing requirements on multinationals. The third section considers, instead, the potential for multinationals themselves to play a role in opening up CBCR data. The report concludes with a discussion of further options and coming changes which may challenge the restrictions imposed by the OECD.

[3] See Cobham (2014b) on the role of data in challenging inequalities, and the scope for CBCR in the context of the UN Sustainable Development Goals.

1- AUTOMATIC EXCHANGE OF INFORMATION (AEOI)

There was general disappointment among transparency and tax justice communities when the OECD decided not to support public CBCR. But this turned to astonishment when the OECD went even further, by taking a position *against* individual tax authorities asking for CBCR from multinationals operating in their jurisdiction. So successful was the lobbying against potential accountability, that something tax authorities could do unilaterally before the OECD was given the CBCR mandate in 2013, will now be seen as counter to the international standards.

Tax authorities of host countries are therefore expected to apply for the CBCR data to be provided by the tax authority of the home country – *if* the latter has it, *if* there is an information exchange agreement in place, and *if* the host country has committed to confidentiality and not to use the data as the direct basis for tax decisions. At a stroke, this OECD decision necessitated the creation of an information exchange process for CBCR.

In this section, we assess the practical terms under which that information exchange can now take place.

CONTEXT: INTERNATIONAL INFORMATION EXCHANGE

Until recently, the only agreed method for global exchange of information was "upon request" (authorities needed to make a specific request about a taxpayer, and within 90 days at least, in the best case scenario some information would be received, such as banking records, company ownership or transfer pricing documentation). In 2013 the G20 endorsed automatic exchange of information for financial account information (e.g. banking information) and asked the OECD to develop a standard. In 2014 the OECD published the Common Reporting standard (CRS).

In order to implement the CRS (and obtain financial account information from other countries), jurisdictions need **two agreements**. First, an international agreement that allows automatic exchange of information. The easiest way to achieve this is to become a party (sign and ratify) the CoE/OECD Convention on Multilateral Administrative Assistance in Tax Matters (the Multilateral Tax Convention) which prescribes automatic exchanges under Article 6. Nevertheless, countries can also sign Double Tax Agreements (DTAs) or renegotiate Tax Information Exchange Agreements (TIEAs) to explicitly allow automatic exchanges.

Second, jurisdictions need to sign a specific memorandum of understanding (MOU) or Competent Authority Agreement (CAA) to determine how the automatic exchanges will take place, for example, pursuant to the CRS (for financial account information).

When the OECD published the CRS and its Interpretative Commentaries, it also published a model bilateral and multilateral CAA for jurisdictions to sign. However, in October of 2014, the OECD presented a slightly different version of the Multilateral CAA, the MCAA, which was actually signed by many jurisdictions. The new version "combined" both models. First it allowed anyone to sign it (unlike the Multilateral Tax Convention that requires all other co-signatories to accept any new jurisdiction). However, for those jurisdictions preferring the bilateral "pick and choose", the MCAA offered Annex E of Section 7 which works like a "dating system" where jurisdictions choose with whom they want to exchange information. Only those that are matched together will exchange information automatically with each other. In spite of this pick-and-choose option within the MCAA, countries like Bahamas and Singapore have refused to sign it and signed (or plan to sign) bilateral CAAs instead.

Following recent significant developments in the automatic exchange of financial account information, the OECD decided that CBCR would also be exchanged based on the CRS's MCAA. An improvement was introduced with the option to choose "all other signatories of the MCAA" under the 'dating' system.

Difference between the MCAA for banking information and for CBCR

In the case of CRS, banking account information about one country's residents is only relevant for that country (e.g. only Argentina cares about Argentine bank deposits in other countries). Likewise, each country will produce different financial account data (eonly Germany will collect information about Argentine money held in German financial institutions). In contrast, the same CBCR of an MNE (produced by that MNE) is relevant for all countries where it operates. For this reason, unlike the CRS, a country could indeed receive the CBCR from some other country that obtained it, or ask the local subsidiary to produce it. The MCAA for CBCR contemplates this, but **one important loophole may prevent countries, especially developing ones from accessing the CBCR** data.

AUTOMATIC EXCHANGE OF CBCR IN PRACTICE

a) Principal Mechanism

BEPS Action 13 prescribes that the Ultimate Parent Entity (Parent) of an MNE has to file the CBCR with its domestic tax authorities, which will exchange it automatically with all authorities where the MNE operates. A pre-requisite for such automatic exchange to take place is that the Parent's tax authorities and the subsidiaries' authorities have in place: (i) an agreement that allows for automatic exchange (e.g. they are both parties to the Multilateral Convention), and (ii) a bilateral CAA (or that they both chose each other in the MCAA for CBCR).

b) Secondary Mechanism

If the Parent's country is not implementing BEPS Action 13, or if for any reason it is not requiring the CBCR to be filed (or if there has been a failure to exchange information with the subsidiaries' authorities as required), then the MNE may appoint one of its subsidiaries in a different country as a "Surrogate". The Surrogate will file the CBCR with its domestic authorities which will then exchange it with all other countries where the MNE's subsidiaries are resident.

From the perspective of the Surrogate's authorities, it will obtain the CBCR by local filing (the Surrogate, a resident subsidiary, will file it directly). If Jurisdiction A where a subsidiary is resident cannot either automatically obtain the CBCR from the Parent's authorities or from the Surrogate's authorities, then – as long as all conditions are met – it may require local filing (as if its local subsidiary were another Surrogate).

c) Loophole: restriction to the Secondary Mechanism

BEPS Action 13 published a Model MCAA and also model domestic legislation to implement CBCR filing (contemplating the principal and secondary mechanism). Even though automatic exchange of CBCR makes little sense as we will go on to explain, it would have been better if the model legislation could have stated that, whenever a country cannot automatically obtain the CBCR from any other country, then it could require its local filing (by a resident subsidiary). However, Article 2.2 of the model legislation does not say this. The conditions that trigger the secondary mechanism (to obtain the CBCR from a Surrogate or requiring its local filing) are: that the Parent's country does not require the Parent's filing of CBCR, or that both authorities have an international agreement that allows for automatic exchange, but not a CAA in place, or that there has been a failure in the exchanges between the Parent's authorities and those of the subsidiary.

The first condition is triggered when the Parent's country is not participating in BEPS. While this is useful, most developed countries (where MNEs are headquartered) will be implementing it, so this condition in unlikely to apply. The last condition means that there has been a problem, but that an exchange relationship actually existed between the subsidiary's country and that of the Parent.

The second condition (contained in the model legislation Article 2.ii.b) is the tricky one (emphasis added):

> *2. A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file a country-by-country report conforming to the requirements of Article 4 with the [Country Tax Administration] with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, on or before the date specified in Article 5, if the following criteria are satisfied:*
>
> *(i) the entity is resident for tax purposes in [Country]; and*
>
> *(ii) one of the following conditions applies:*
>
> *a) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence; or,*
>
> *b) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes* ***has a current International Agreement to which [Country] is a party but does not have a Qualifying Competent Authority Agreement in effect*** *to which [Country] is a party by the time specified in Article 5 for filing the country-by-country report for the Reporting Fiscal Year; or,*
>
> *c) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the [Country Tax Administration] to the Constituent Entity resident for tax purposes in [Country].*

It is not enough to prove that the CBCR has not been obtained automatically. An international agreement that allows automatic exchange of information must already exist between the relevant countries (a DTA, TIEA or both jurisdictions being party to the Multilateral Tax Convention). Having an international agreement, if then no CAA is effectively in place (for instance because countries have not chosen each other in the MCAA's 'dating' system), then the secondary mechanism is triggered. In other words, developing countries that do not have an international agreement with developed countries (where MNEs are headquartered) will not be able to obtain CBCR automatically or by secondary mechanism (automatically from the Surrogate or direct filing from the local subsidiary). For instance, Argentina and the U.S. have no exchange of information agreement in place. This means that Argentina (as well as **many developing countries in the same situation) will not be able to access CBCR**, even if they are implementing BEPS and are members of the Inclusive Framework.

As an alternative to this restrictive, bureaucratic and cumbersome exchange of information, countries should require direct filing of the CBCR by local subsidiaries, as the next section describes.

2- DIRECT FILING

In an attempt to restrict access to CBCR, the OECD is contemplating access, first, by way of automatic exchange of information, provided that various conditions are met. However, automatic exchange of CBCR makes very little sense because once an MNE has produced it (it is a 1-2 page document), it could easily be sent to all subsidiaries for their local direct filing. Some argue that CBCR could not be asked of subsidiaries because they cannot be asked to produce information that they may not have. While in theory this sounds reasonable, in practice the only thing that a subsidiary would need to obtain is the very same one-page document that the Parent has already produced and submitted to other authorities. In addition, BEPS Action 13 contemplates direct filing of two other documents: the local file and the master file. The local file has transfer pricing documentation which refers to the subsidiary, while the master file has information about the whole MNE which is obviously produced by the Parent. In other words, if a subsidiary may be asked to locally file the master file (produced by the Parent), what is the justification for not allowing for CBCR to be requested?

In principle the OECD tries to portray that a secondary mechanism (including direct filing) will solve cases where a jurisdiction is not receiving it automatically from the Parent. The point above proves that this is not true (for countries that do not have an international agreement with the Parent's country). In any case, why leave the best and cheapest option as an exception or secondary mechanism? Why would a country even bother to sign the MCAA for CBCR if it could simply ask for it directly from its resident subsidiaries?

JUSTIFICATIONS TO PREVENT DIRECT FILING

a) Confidentiality

The obvious answer to that question above is the concern over confidentiality. Since countries sign agreements only if they trust that their partner country will respect confidentiality, a lack of trust could prevent a country from receiving the CBCR. The Global Forum already assesses confidentiality provisions for many countries, including extra requirements for the CRS. However, even countries like Argentina that meet confidentiality requirements for the CRS (according to the OECD's Peer Reviews conducted by the Global Forum), will not be allowed to obtain CBCR from the U.S. This proves that compliance with confidentiality is not enough if the developed country is unwilling to sign a treaty with a developing country. Not only is the confidential status of the CBCR questionable, but some countries are even considering publishing these CbC reports, confirming that many agree that they contain no commercial secrets. As a matter of fact, banking institutions in the EU have already been publishing similar CbC reports and no competition or bankruptcy crisis has resulted.

b) Use of Information

The other reason is to restrict the use of the CBCR. Action 13 is explicit in that the CBCR can only be used to assess transfer pricing risk (but not to directly re-adjust the income of an MNE). A possible strategy was that, by providing access only via AEOI, a developed country could restrict access to the

CBCR from any country misusing it. However, the same is true for direct filing. An MNE could rightly invoke such breach of BEPS (if authorities misuse the CBCR) to oppose to file it in any country.

THE BRIGHT SIDE: JURISDICTIONS REQUIRING DIRECT FILING DESPITE BEPS RULES

Many countries have already legislated for local filing obligations and are disregarding BEPS Action 13's limits. For example, it is not a condition to already have an international agreement in place, before many countries require direct filing of the CBCR by local subsidiaries. Here are a few examples.

a) Australia: direct filing in all circumstances (regardless of AEOI)

Australian Tax Authorities' Guidelines[4]

"It requires multinational entities with an annual global income of AUD $1 billion or more to provide us with three statements known as the Local file, Master file and the CbC report within 12 months after the end of their income tax year (…)

Who does CbC reporting apply to?

CbC reporting applies to significant global entities, which are broadly defined as global parent entities with annual global income of AUD $1 billion or more, or a member of a consolidated group of entities where the global parent entity has annual global income of AUD $1 billion or more.

This definition includes both Australian headquartered multinationals and the local operations of foreign headquartered multinationals […]" (emphasis added).

b) China: direct filing if not obtained automatically from the other country

Deloitte Global Transfer Pricing Alert 2016[5]

"There are also provisions that allow the Chinese tax authorities to request copies of CbC reports from foreign tax authorities, as well as provisions to require the information from local entities if the foreign tax authorities do not provide the information" (emphasis added).

c) Germany bill: direct filing if Parent entity not identified

EY Transfer Pricing Alert, June 2nd 2016

"A German entity will be obliged to indicate in its German tax return whether it is:

1. *A German group parent company*
2. *A designated surrogate parent company, Or*

[4] https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Transfer-pricing/country-by-country-reporting-and-transfer-pricing-documentation/

[5] Deloitte (2016)

3. A domestic group company of a foreign Group parent company

In the last case, the German entity is also obliged to specify which group entity will file the CbC report and which tax authority will receive the CbC report. <u>If this information is missing in the German tax return, the German entity is required to submit the CbC report by itself (local filing) to the German tax authorities</u>" (emphasis added).

d) Spain: direct filing if no agreement is in place (not only if there is no CAA in place)

[Royal Decree 634/2015, Chapter V, Article 13]

"Article 13. Information and documentation related entities and operations.

1. Spanish residents who have the status of a dominant group defined in the terms set out in Article 18.2 of the Tax Act, and are not dependent at the same time another entity, resident or non-resident entities must bring the <u>country by country information</u> in Article 14 of this Regulation refers to.

It also must provide this information <u>entities resident in Spanish territory dependent, directly or indirectly, of a non-resident entity in Spanish territory</u> than at the same time dependent on another or permanent establishments of non-resident entities, <u>provided that any of the occur following circumstances</u>:

(…)

c) There is no <u>agreement on automatic exchange of information</u> with respect to such information, with the country or territory in which the non-resident tax resident entity concerned" (emphasis added – Google translation[6]).

[6] Original text in Spanish: *Artículo 13. Información y documentación sobre entidades y operaciones vinculadas.*

1. Las entidades residentes en territorio español que tengan la condición de dominantes de un grupo, definido en los términos establecidos en el artículo 18.2 de la Ley del Impuesto, y no sean al mismo tiempo dependientes de otra entidad, residente o no residente, deberán aportar la información país por país a que se refiere el artículo 14 de este Reglamento.

Asimismo, deberán aportar esta información aquellas entidades residentes en territorio español dependientes, directa o indirectamente, de una entidad no residente en territorio español que no sea al mismo tiempo dependiente de otra o a establecimientos permanentes de entidades no residentes, siempre que se produzca alguna de las siguientes circunstancias:

(…)

c) Que no exista un acuerdo de intercambio automático de información, respecto de dicha información, con el país o territorio en el que resida fiscalmente la referida entidad no residente.

3- PUBLICATION BY MNES

Undoubtedly, the easiest and most cost-effective mechanism would be for MNEs to publish their CBCR online in a machine-readable register and record the location. This would avoid bureaucracy and staff needed for both AEOI and direct filing, benefitting both authorities and MNEs. Authorities would not need staff or time to sign agreements for AEOI of CBCR, they would simply consult the online registry whenever needed. MNEs, for their part, would save employees' time. Under the current AEOI/Direct filing mechanisms, the Parent has to provide the CBCR to a tax authority and all subsidiaries must notify their own authorities on the Parent or Surrogate entity, or file it directly. Given the obvious benefit of online publication for MNEs, their opposition could only indicate that opacity serves them best, indicating either illegal, or at the very least, illegitimate conduct.

Online publication by MNEs would allow access to civil society organisations (unlike a local direct filing which would only grant access to authorities). This would allow NGOs and journalists to expose, not commercial secrets, but certainly any major misalignment between the distribution of profit and the location of real economic activity, which is supposed to be the objective of BEPS. "A red flag might be raised if, for example, local subsidiaries account for half of the economic activity but only 5% of the declared profit; while a subsidiary in Luxembourg, for example, is in the opposite position."[7]

A number of NGOs have published a Q&A[8] on CBCR explaining that its content is relevant beyond tax and transfer pricing purposes (i.e. relevant not only for authorities) and why it does not compromise trade secrets. Their arguments include:

> *Firstly, it would make transparent data that is useful to assess the impact of governments' tax policies. By seeing how company performance changes over time, we would be in a better position to assess the efficacy of government policies, in taxation and other areas…*
>
> *By creating transparency on all the tax payments of transnational enterprises (not only for corporate income tax), it would allow citizens to keep their governments accountable for the funds they receive from companies. This information is particularly relevant in countries where misappropriation of public funds is a major problem. Public CBCR can help to flag up corruption risks by shedding light on any special arrangements between companies and governments…*
>
> *Making the CBCR reports public would ensure that more sets of eyes, across different stakeholder groups, could help digest the mass of data filed by companies and flag any indicators of risk to the appropriate tax authorities. This advantage would be most keenly felt in countries that have weak capacity in their tax administrations, including developing countries. Public CBCR would also have an important deterrent effect, as presenting questionable numbers carries a reputational risk for companies…*

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[7] Cobham (2014a).

[8] Financial Transparency Coalition (2016).

> *Making CBCR public would ensure that competition once again centres on the delivery of the best product at the best price, rather than who can hire the most tax planners and think up the most complex structures of shell companies. In fact, discouraging aggressive tax avoidance and evasion is one of the main arguments for making CBCR public…*
>
> *Public CBCR would serve to level the playing field between transnational enterprises and national companies, who often are already obliged to make publicly available the type of information required for CBCR. As such, small and medium sized enterprises will be in a better position to compete.*

Some European countries at least *are* considering publishing this information themselves, such as the UK, the EU and Germany. In fact, similar CbC reports for the banking sector are already public in the EU. This proves that many countries agree that the CBCR does not contain confidential information – unless there is a claim that commercial confidentiality concerns are somehow inapplicable to banks.

A Middle Ground? CBCR Statistics

a) CBCR Statistics on each MNE: aggregating figures for every jurisdiction

Even if CBCR remains confidential for some time, MNEs should at least publish a summary of the CBCR including for example the percentages of turnover, taxes, and employees by jurisdiction (without disclosing the number and type of entities in each jurisdiction). Some companies, such as Vodafone, already disclose voluntarily some tax and economic activity measures for some of the jurisdictions in which they operate.[9] Improvements (e.g. not excluding major secrecy jurisdiction subsidiaries) are straightforwardly possible with CBCR data.

b) CBCR Statistics by country: aggregating figures of all MNEs headquartered in a country

Countries of Parent entities should publish aggregate CBCR statistics of their resident headquartered-MNEs, ideally differentiating between industries. For example, Germany could publish aggregate CBCR for the German automobile industry, German pharmaceutical companies, etc. This way, it would be impossible to know any of an MNE's numbers, but Germans and non-Germans alike would still be able to find out where and how much taxes German MNEs are paying in each country.

[9] See e.g. https://www.vodafone.com/content/dam/vodafone-images/sustainability/downloads/vodafone_2015_tax.pdf.

4. THE FUTURE OF CBCR: OPENING UP OR NARROWING DOWN?

Two main scenarios can be envisaged for CBCR. Given the current flux, the status quo is not an option. Either the process of opening up information will continue, with more or less momentum for inclusion of lower-income countries; or else the aggressive corporate pushback will see tighter and tighter limits on transparency imposed and confirmed.

The OECD, having delivered a standard close to the original civil society proposal, could press on. Most importantly, this would involve a gradual reversal of the failure to deliver BEPS Action 11. This called for the creation of a baseline estimate of the global scale of profit misalignment with real economic activity, and the tracking over time of progress. The decision in BEPS Action 13 to prevent even the OECD itself having full access to CBCR data, made this impossible. But some OECD governments have committed to provide information to the OECD for analysis, and it is possible that over time either the OECD, IMF or both could establish themselves as an 'honest broker', accessing all or most of the CBCR data from around the world and publishing annual assessments of the scale and country-level intensity of misalignment.

On the other hand, the OECD may continue to be led by the corporate lobbying that determined the path of BEPS Action 13 – with little or no real transparency resulting, despite the question of compliance costs being settled. A middle path would see a limited access to data and resulting publication of partial aggregate data, inevitably of more value to OECD countries than their lower-income counterparts. These paths would confirm the arguments increasingly put by the G77 group of countries, and supported by many civil society actors, that the OECD is not a fit body to lead global tax work, and that a representative, intergovernmental tax body is needed instead (Cobham & Klees, 2016).

Various paths lie ahead for multinationals also. The more resistant US corporate lobby is likely to continue pushing for constraints on access for lower-income country tax authorities, and against any publication. But transparency champions are increasingly emerging, and investor voices are becoming more evident in media calls for public CBCR, which they increasingly see as fundamental data to carry out risk assessment. Each such step undermines the claims of the transparency resisters that there are commercial benefits to opacity; while the academic evidence has begun to stack up that opacity and lower effective tax rates are bad for investors' risk-return ratios (see e.g. Brooks *et al.*, 2016).

Civil society, meanwhile has been the most propositional actor. In partnership with Open Knowledge, who are pioneers in using open data to achieve tangible policy results and human progress, TJN has launched Open Data for Tax Justice (OD4TJ) which now includes a wide range of partner organisations from the spheres of open data, tax justice and investigative journalism. A key project during 2016-17, with support from the Omidyar Network and the Financial Transparency Coalition, is the launch of a new, fully open database of country-by-country reporting.

Using only the currently public data, the database will provide both a testing ground for existing reporting, and the development of new risk tools and analysis. In addition, it will be a platform for transparency champions among multinationals to publish their own CBCR data. Ultimately, this has the potential to form the base for a global registry of CBCR data, equivalent to the IATI registry of aid data, which is the eventual, logical conclusion of the path to greater transparency – eliminating once and for all the inequality in taxing rights between countries at different income levels that stems from opacity.

OECD country governments may decide to require publication of CBCR data, but the longer the delay since OECD private reporting came into place, the more confident the opposing lobby will feel. The most important actors may prove to be lower-income countries themselves. If the OECD and others continue an apparent drift towards the exacerbated inequality of taxing rights, the dam may break as non-OECD countries simply decide to require direct reporting. A critical mass of G77 countries could then emerge, tipping the global balance and quite possibly overcoming resistance to publication among OECD country governments. And arguably this path would be more empowering than that of waiting for OECD governments to make CBCR data public, so that the current inequalities are overcome as a gift.

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