

OECD/G20 Base Erosion and Profit Shifting Project

Public consultation document: Review of Country-by-Country Reporting (BEPS Action 13)

6 February 2020 – 6 March 2020



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Action 13 of the OECD/G20 Base Erosion and Profit Shifting Project (BEPS Action 13) established a three-tiered standardised approach to transfer pricing documentation, comprising:

- a master file with high level information regarding a multinational enterprise's (MNE group) global business operations and transfer pricing policies;
- a local file with detailed transactional transfer pricing documentation specific to each jurisdiction; and
- a Country-by-Country Report (CbC report) that provides annually and for each tax jurisdiction in which an MNE group does business the amount of revenue, profit before income tax and income tax paid and accrued, together with other information relevant to a high level risk assessment.

The specific content of these three documents reflects an effort to balance the needs of tax administrations to have access to robust, relevant information for use in risk assessment and enforcing transfer pricing rules, against concerns from business surrounding the burden placed on MNE groups and the potential use of the information provided. Of these documents only the CbC report is covered by the BEPS Action 13 minimum standard, which all members of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) are committed to implement.

The BEPS Action 13 report also included a mandate for a review of the BEPS Action 13 minimum standard, to be completed by the end of 2020 (the 2020 review) which would take into account matters including:

- whether modifications to the content of CbC reports should be made, to require the reporting of additional or different data;
- the appropriateness of the applicable revenue threshold;
- the effectiveness of filing and dissemination mechanisms; and
- the implementation of the BEPS Action 13 implementation package.

In June 2018, the Inclusive Framework directed the OECD Committee on Fiscal Affairs' (CFA) Working Party 6 (on the Taxation of Multinational Enterprises) and Working Party 10 (on Transparency and Exchange of Information) to work together to conduct this 2020 review and to formulate draft recommendations, if any changes need to be made. This public consultation document forms an intrinsic and essential part of this review, as a mechanism to obtain feedback from all stakeholders. Specific questions upon which comments are sought are set out in each chapter of the document.

This public consultation document comprises three chapters. Chapter 1 contains general topics concerning the implementation and operation of BEPS Action 13, including the MNE group experience of CbC reporting implementation by jurisdictions, the use of CbC reports by tax administrations and other aspects of BEPS Action 13, being the master file and local file. Chapter 2 contains topics concerning the scope of CbC reporting, including the definition of an MNE group, and the level and operation of the

consolidated group revenue threshold. Chapter 3 contains topics concerning the content of a CbC report, including whether aggregate or consolidated information should be provided in Table 1, whether information in Table 1 should be presented by entity rather than by tax jurisdiction, and whether additional or different information is needed. The topics discussed throughout this document reflect issues that are specifically included in the mandate for a 2020 review set out in the BEPS Action 13 report, issues where interpretative guidance issued since 2016 has been unable to result in a consistent approach to be applied by all jurisdictions, and issues that have been raised by jurisdictions or stakeholders and that can only be addressed through a change to the minimum standard, which must be agreed by the Inclusive Framework.

The Inclusive Framework welcomes comments on all aspects of the BEPS Action 13 report, but specifically invites comments on the questions raised throughout this document. Interested parties are invited to send their comments no later than 18h00 (CET) on **6 March 2020**, by e-mail to taxpublicconsultation@oecd.org in Word format (in order to facilitate their distribution to government officials). Please note that all comments on this public consultation document will be made publicly available. Comments submitted in the name of a collective "grouping" or "coalition", or by any person submitting comments on behalf of another person or group of persons, should identify all enterprises or individuals who are members of that collective group, or the person(s) on whose behalf the commentator(s) are acting. Speakers and other participants at the upcoming public consultation meeting in Paris will be selected from among those providing timely written comments on this consultation document.

The public consultation meeting on the 2020 review of BEPS Action 13 will be held on 17 March 2020, at the OECD Conference Centre in Paris. The objective is to provide external stakeholders an opportunity to provide input on the ongoing work. Information on the public consultation meeting is [available on the OECD website](#).

The views and proposals included in this document do not represent the consensus views of the CFA, the Inclusive Framework or its subsidiary bodies but are intended to provide stakeholders with substantive proposals for analysis and comment.

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*Chapter 1. General topics concerning the implementation
and operation of BEPS Action 13*

This chapter includes a discussion on general topics concerning the BEPS Action 13 minimum standard.

- Implementation of the BEPS Action 13 minimum standard.
- The appropriate and effective use of CbC reports.
- Other elements of the BEPS Action 13 report.

1. Implementation of the BEPS Action 13 minimum standard

1. The BEPS Action 13 report recommended that CbC reporting should be implemented for fiscal years beginning on or after 1 January 2016, but acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to law. In the end, 58 jurisdictions required or permitted the filing of CbC reports by resident entities that were the ultimate parent entity (UPE) of an MNE group for fiscal years beginning on or after 1 January 2016, subject only to an exemption based on the level of consolidated group revenue in the immediately preceding fiscal year. As of January 2020, approximately 90 members of the Inclusive Framework had implemented legislation to introduce a CbC reporting requirement and a further 25 had legislation in draft form. This means that substantially all MNE groups above the revenue threshold are now subject to a requirement to file a CbC report or will be in the near future.

2. In addition, there are currently in excess of 2 400 bilateral instruments in place for the exchange of CbC reports under the Multilateral Convention for Mutual Administrative Assistance on Tax Matters (the Multilateral Convention), bilateral double tax conventions (DTCs) and tax information exchange agreements (TIEAs), and other arrangements such as Council Directive (EU) 2016/881 and those between certain jurisdictions and their overseas territories or dependencies.

3. Outcomes of the second annual peer review of the BEPS Action 13 minimum standard were agreed by the Inclusive Framework and released in September 2019. This included a review of implementation of CbC reporting by 116 members of the Inclusive Framework. Since the first peer review, completed in 2018, important steps have been taken by a number of jurisdictions to address shortcomings in their implementation of the minimum standard and 62 recommendations made in the first peer review have been addressed and removed. Further steps are required to address remaining recommendations and this will be monitored in the third annual peer review, to be completed and released in the summer of 2020.

Questions for public consultation

1. What comments do you have regarding the general status of implementation of CbC reporting by members of the Inclusive Framework?

2. The appropriate and effective use of CbC reports

2.1. The appropriate use of CbC reports

4. Paragraphs 25 and 59 of the BEPS Action 13 report provide that jurisdictions will use CbC reports for assessing high level transfer pricing risk and other BEPS-related risks, as well as for economic and statistical analysis if appropriate. The information in a CbC report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and full comparability analysis and on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on CbC reporting data. If such adjustments are made by a jurisdiction's tax administration, the competent authority will promptly concede the adjustment in any relevant competent authority proceeding. This does not imply, however, that jurisdictions would be prevented from using CbC reports as a basis for making further enquiries into an MNE group's transfer pricing arrangements or into other tax matters in the course of a tax audit. These limits on the use of CbC reports are also reflected in the CbC Multilateral Competent Authority Agreement (CbC MCAA) and the Bilateral Competent Authority Agreements (CbC bilateral CAAs) based on the models contained in the Country-by-Country Reporting Implementation Package set out in the BEPS Action 13 report and in Annex IV to Chapter V of the OECD Transfer Pricing Guidelines (the CbC reporting Implementation Package).

5. In September 2017, the OECD Forum on Tax Administration (FTA) released *Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports*, which contained further explanation as to the meaning and extent of the restrictions jurisdictions have committed to with respect to the use of CbC reports. It also set out the questions that jurisdictions should be able to respond to positively in order to demonstrate that effective controls over the appropriate use of CbC reports are in place, as well as examples of measures that tax administrations may use.

6. This guidance has been incorporated into the BEPS Action 13 peer review, so all Inclusive Framework members are reviewed against this element of the minimum standard. To the extent a jurisdiction has a recommendation under the peer review to implement controls over the appropriate use of CbC reports, this may be used by competent authorities in other jurisdictions to suspend the exchange of CbC reports with the competent authority in that jurisdiction and this will not be considered systemic failure to exchange within the terms of the CbC MCAA or CbC bilateral CAAs based on the CbC reporting Implementation Package. A jurisdiction that does not yet meet the standard for controls over the appropriate use of CbC reports is also unable to apply local filing under the BEPS Action 13 minimum standard.

2.2. The effective use of CbC reports

7. While jurisdictions are committed to the appropriate use of CbC reports, it is also essential that they have access to tools to ensure that they are able to use CbC reports effectively for the high level risk assessment of transfer pricing risk and for assessing other BEPS-related risks.

8. The first support for tax administrations in using CbC reports in the high level risk assessment of MNE groups was the OECD FTA's *CbC Reporting: Handbook on the Effective Use Of CbC Reporting Information in Tax Risk Assessment* (FTA CbCR risk assessment handbook), released in September 2017. This explains how CbC reports could be incorporated into different approaches to tax risk assessment, a number of important indicators of potential tax risk that may be detected using CbC reports and, importantly, how a positive flag under each of these indicators could also be explained by non-tax or non-BEPS related factors. It also emphasises the importance of using CbC reports alongside other sources of information, and includes a list of other sources that may be particularly relevant. The FTA CbCR risk assessment handbook has been used by a number of tax administrations in developing their practices for using CbC reports in risk assessment.

9. CbC reports are also at the heart of the documentation package used by tax administrations in the multilateral risk assessment of MNE groups under the OECD's pilots for an International Compliance Assurance Programme (ICAP). This gives MNE groups an opportunity to discuss the content and implications of information contained in their CbC report with a number of tax administrations simultaneously, and for these tax administrations to consult each other regarding their findings and request additional information and clarification from the MNE group.

10. Finally, the OECD is currently developing a CbC reporting Tax Risk Evaluation & Assessment Tool (TREAT), which will support tax administrations, including those from developing countries, in reading and interpreting CbC reports. This will allow a tax administration to see quickly and easily where some of the factors described in the FTA CbCR risk assessment handbook that could be interpreted as potential risk indicators may be present and use this, together with other available information, to determine that an MNE group is low risk, or that further consideration is needed.

Questions for public consultation

2. What comments do you have with respect to the use of CbC reports by tax administrations? To date, what impact has this had on the number and nature of requests for additional information?

It may not be clear what source of information has led to a query from a tax administration, so please base your answer on changes since the first CbC reports were filed and exchanged, excluding changes that can be explained by other factors, such as other changes to domestic tax information requirements.

3. Other elements of the BEPS Action 13 report

11. The BEPS Action 13 report contains recommendations for a three-tiered approach to transfer pricing documentation, including a master file and local file, as well as a CbC report. A list of information that should be contained in a master file and local file are set out in the report and are now included respectively in Annexes I and II to Chapter V of the OECD Transfer Pricing Guidelines.

12. Paragraph 49 of the BEPS Action 13 report recommends that the master file and local file should be implemented through local country legislation or administrative procedures and filed directly with the tax administration in each relevant jurisdiction. Although not part of the BEPS minimum standards, and so not subject to peer review, jurisdictions agreed that consistent use of the standard lists of documentation contained in Annex I and Annex II to Chapter V should be taken into account when introducing a domestic master file or local file requirement. However, it is understood that a number of jurisdictions have introduced master file and local file requirements that differ from or go further than the documentation contained in these standard lists.

13. A single standardised master file reduces the compliance costs for MNE groups, which only have to produce one master file, and ensures consistent information is available to different tax administrations. This is increasingly important as cases where greater coordinated and multilateral engagement between tax administrations are becoming more common at the risk assessment, audit and dispute resolution stages, with the potential to provide greater certainty both to MNE groups and tax administrations. Better standardisation of documents such as the master file is also likely to drive greater compliance with documentation requirements, in particular in jurisdictions where subsidiaries of a foreign MNE group are located. Where different documentation requirements apply, it may be difficult for local entities to obtain information held by or concerning other parts of an MNE group, and the quality of the information they do obtain may not be robust or may differ from that provided by entities in other jurisdictions. This risk is reduced where information can be compiled centrally by the UPE of an MNE group and then provided to other members of the MNE group in jurisdictions where this information is required, improving the availability, quality and consistency of the information provided to tax administrations.

14. There may be less of an imperative for consistency in the documentation contained in local files (or equivalent jurisdiction-specific documentation packages). While, in general, standardised documentation is likely to improve consistency in risk assessment practices and outcomes between tax administrations, transactional transfer pricing documentation will typically need to be prepared separately for each jurisdiction where it is required. Therefore, the burden on MNE groups resulting from different requirements between jurisdictions may be less compared with the master file. However, there may still be some benefit and cost saving for MNE groups from a process perspective, if systems for collecting and collating transactional and jurisdiction-specific information and documentation can be standardised, even if the information and documentation itself differs.

Question for public consultation

3. What comments do you have regarding cases where jurisdictions have implemented master file requirements that differ from or go further than the documents listed in Annex I to Chapter V of the OECD Transfer Pricing Guidelines?

Chapter 2. Topics concerning the scope of CbC reporting

This chapter includes a discussion on topics concerning the scope of CbC reporting.

- Should a single enterprise with one or more foreign permanent establishments be a Group for the purposes of CbC reporting?
- Should separate CbC reports be prepared by MNE groups that are under common control and which in aggregate have consolidated group revenue above the CbC reporting threshold?
- Should the level of the consolidated group revenue threshold be reduced?
- Should a jurisdiction with a consolidated group revenue threshold denominated in a currency other than EUR be required or permitted to rebase its threshold periodically?
- Should the threshold for Excluded MNE Groups take into account more than one year of consolidated group revenue?
- Should extraordinary income be included in consolidated group revenue?
- Should gains from investment activity be included in consolidated group revenue?
- In cases where the previous fiscal year of an MNE group is of a period other than 12 months, should the consolidated group revenue threshold (or, alternatively, consolidated group revenue in the immediately preceding fiscal year) be adjusted in determining whether the MNE group is an Excluded MNE Group?

4. Should a single enterprise with one or more foreign permanent establishments be a Group for the purposes of CbC reporting?

15. Article 1 of the model legislation in the CbC Reporting Implementation Package includes definitions of a Group and an MNE Group for the purposes of a requirement to prepare and file a CbC report. For these purposes, a Group is a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements or would be so required if any of the enterprises were traded on a public securities exchange. An MNE Group means any Group that includes two or more enterprises resident in different jurisdictions or that includes an enterprise that is resident in one jurisdiction and is subject to tax through a permanent establishment in another jurisdiction, and that is not below the consolidated group revenue threshold.

16. Although a Group can be an MNE Group as a result of the presence of a permanent establishment in another jurisdiction, currently in order for there to be a Group there must be a collection of enterprises related through ownership or control. It is not clear whether a single enterprise that is resident in one jurisdiction and which conducts business through permanent establishments in other jurisdictions falls within this definition. Further, it is not clear that a single entity could be viewed as preparing consolidated financial statements, even if it prepares financial statements that incorporate the results of permanent establishments.

17. A small number of jurisdictions have identified resident enterprises that meet this description and that have revenue above EUR 750 million. Therefore, the definition of a Group could be amended to make it clear that it covers these situations.

4.1. The benefits of such an approach

18. While it is unlikely that a large number of enterprises will be impacted by such a change, it would be consistent for enterprises that conduct business through permanent establishments to be treated consistently with those that conduct business through subsidiaries. MNE groups that are currently required to prepare and file a CbC report would be unaffected.

4.2. The challenges of such an approach

19. As a single enterprise may not be able to prepare consolidated financial statements under applicable accounting standards, the impact of this would need to be considered in designing any changes to the CbC Reporting Implementation Package.

20. This may require a legislative change for jurisdictions that had implemented law based on the model legislation in the CbC Reporting Implementation Package, unless they are able to achieve the same effect through issuing guidance, which would require time.

4.3. The changes that would be needed to the BEPS Action 13 package

21. Paragraph 51 of the BEPS Action 13 report may require amendment to make it clear that an MNE Group includes a single enterprise conducting business through one or more foreign permanent establishments.

22. The definition of a Group in Article 1 of the CbC Reporting Implementation Package would require amendment. This would make clear that a Group could also include an entity that is subject to tax with respect to a business carried out through a permanent establishment (provided it prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes) and the entity is required to prepare financial statements for financial reporting purposes under applicable accounting standards or would be so required if its equity interests were traded on a public securities exchange. It would also be clarified that references to Consolidated Financial Statements include entity financial statements if a Group includes a single entity carrying on business through a permanent establishment.

Questions for public consultation

4. Are there any benefits from clarifying the definition of a Group to include a single entity that conducts business through one or more permanent establishments, in other jurisdictions in addition to those described in this document?
5. Are there any practical challenges to MNE groups resulting from clarifying the definition of a Group to include a single entity that conducts business through one or more permanent establishments in other jurisdictions, in addition to those described in this document?

5. Should separate CbC reports be prepared by groups that are under common control and which in aggregate have consolidated group revenue above the CbC reporting threshold?

23. Paragraph 51 of the BEPS Action 13 report recommends that all MNE groups be required to file a CbC report each year with the sole exception of those under the consolidated group revenue threshold (this exemption is provided at paragraph 52 of the report). The model legislation contained in the CbC Reporting Implementation Package defines a Group by reference to a requirement to prepare consolidated financial statements including where such a requirement would apply if any of the enterprises were traded on a public securities exchange. References to consolidated financial statements are also included in other parts of the BEPS Action 13 report, including in the definition of a constituent entity in the general instructions for completing the CbC report template, at page 31. These references to consolidated financial statements ensure an objective definition of a Group that is already familiar to and used by MNE groups that currently prepare consolidated financial statements, and is based on well-established principles that may be applied by MNE groups that do not currently prepare consolidated financial statements.

24. Tax administrations and some stakeholders are however concerned that the current definition of an MNE Group does not cover all combinations of enterprises, that pose a transfer pricing or other BEPS risk to jurisdictions in which they operate. For example, transfer pricing rules in many jurisdictions cover controlled transactions between enterprises that are under the common control of one or more individuals, but these arrangements are not covered by the current BEPS Action 13 minimum standard. This has been identified as a particular concern by tax administrations in some jurisdiction where, for legal, historic or cultural reasons, it is common for wealthy individuals and families to hold business interests directly, through a non-corporate vehicle that is not required or able to prepare consolidated financial statements, or through an investment entity that is not required to consolidate its holdings. Where this involves holdings in several groups, which separately are required to prepare consolidated financial statements (or would be if any enterprise in the group was listed on a public securities exchange), but which do not meet the current consolidated group revenue threshold, no CbC report is required. This is despite the fact that taken together these groups may exceed the consolidated group revenue threshold and do pose a potential transfer pricing risk.

25. The Inclusive Framework invites comments from stakeholders on the introduction of a CbC reporting filing obligation that would apply where all of the following conditions are met:

- an individual (or individuals acting together) directly or indirectly control (which could be defined as including more than 50% of voting rights, 50% of voting rights and equity or based on accounting principles) two or more groups (based on the definition of a Group in the BEPS Action 13 report);
- looked at together these groups include entities resident in more than one jurisdiction or include an entity resident in one jurisdiction which is subject to tax

on profits from activities undertaken through a permanent establishment in another jurisdiction;

- looked at together, these groups have aggregate consolidated group revenue in the immediately preceding fiscal year of at least EUR 750 million; and
- two or more of these groups each have consolidated group revenue in the immediately preceding fiscal year of at least an agreed proportion (e.g. one quarter, one third etc.) of the general CbC reporting consolidated group revenue threshold.

26. Where these conditions are met, the UPE of each of these groups would be required to prepare and file a CbC report based on the CbC report template and definitions in the BEPS Action 13 report and subsequent guidance. Table 3 of these CbC reports should include the name and residence jurisdiction of the UPEs of all other groups under the common control of the same individual or individuals that are required to file a CbC report under this provision. This should enable the tax administration in a jurisdiction where a group has constituent entities to identify the CbC reports of other related groups, if these also have constituent entities in that jurisdiction. This would not apply to the investments of widely held collective investment vehicles, which do not pose the same transfer pricing risk.

5.1. The benefits of such an approach

27. This approach balances increased neutrality between the treatment of related businesses that are held through corporate structures and those that are held directly by individuals, through non-corporate vehicles or through investment entities, with the need to ensure a manageable burden on groups brought within scope.

28. This would provide tax administrations with CbC reporting information on constituent entities in certain groups that, taken together with other groups under common control, exceed the consolidated group revenue threshold and which could pose a transfer pricing and BEPS risk to their jurisdictions. It does not require a single CbC report to be produced including all of the constituent entities in these related groups, but would still assist tax administrations in understanding the potential transfer pricing and other BEPS related risks posed by groups under common control. This includes both risks arising within each group and those resulting from dealings between related groups.

29. In terms of the burden on groups, the UPE of each group will be required to prepare a CbC report containing information on its constituent entities, which should be available to the same extent as to MNE groups currently within the scope of CbC reporting. By applying a consolidated group revenue threshold (which is an agreed proportion of the general CbC reporting threshold), small and medium sized groups remain exempt from any obligation to prepare a CbC report while, other than providing the name and residence details of the UPEs of other groups under common control, each CbC report would not be required to include any information on these other groups. This is significantly less burdensome than possible alternative approaches, such as to require a single CbC report to be prepared including the constituent entities of all related groups, as well as standalone entities under common control. This also means that the entire existing framework and guidance for defining a UPE, identifying constituent entities and determining the content of a CbC report may be relied upon without modification.

30. Depending upon the consolidated group revenue threshold used to require a single group to prepare a CbC report (which would be a proportion of the general CbC reporting threshold), this could address some cases identified by tax administrations where it appears an MNE group may have been re-organised to create two or more smaller groups each with consolidated group revenue below the EUR 750 million threshold.

5.2. The challenges of such an approach

31. There are two main potential challenges to groups from such an approach. The first is that the UPE of a group requires knowledge of other groups under the common control of an individual or individuals acting together, in order to determine whether it is required to prepare and file a CbC report. This information may not necessarily be in the possession of the UPE, but this risk may be reduced by limiting the scope of the filing obligation to groups over a certain proportion of the consolidated group revenue threshold and which are over the agreed threshold in common ownership or control.

32. The second potential challenge to groups is that the UPEs of groups below the general CbC reporting consolidated group revenue threshold will be required to prepare and file a CbC report in certain, narrowly defined circumstances. However, this burden is comparable with that of MNE groups currently within the scope of CbC reporting and is only applied where a group is under common control with other groups.

33. This approach also poses a number of challenges to tax administrations seeking to use CbC reports for a high level transfer pricing risk assessment, including those listed below. These may however be accepted in achieving balance between the level of information made available to tax administrations and the burden placed on groups.

- In many jurisdictions, transfer pricing rules apply to controlled transactions between entities where the common ownership percentage is below 50% (i.e. the entities are related but there is no control relationship). The approach described above would not require CbC reports to be prepared in circumstances where an individual or individuals have a significant interest in two or more groups, but this is not sufficient to establish control. Therefore not all situations where related groups pose a potential transfer pricing risk would be covered.
- It does not require a single CbC report to be filed including as constituent entities all entities under the direct or indirect common control of an individual or individuals acting together.
- A CbC report would currently only be exchanged with competent authorities in jurisdictions where the particular MNE group has constituent entities. Where two or more groups are under common control, but have constituent entities in different jurisdictions, currently a tax administration would not receive a copy of the CbC report of any groups which do not have a constituent entity in its jurisdiction.
- It does not require each group's CbC report to include revenue received from other related groups as related party revenue in Table 1.
- Within each group, the definition of a constituent entity is based on the applicable financial reporting rules for consolidation (with adjustments to include entities that are not consolidated solely on size or materiality grounds and permanent establishments that are required to prepare separate financial statements). Entities

that are less than 50% controlled by the UPE will not typically be constituent entities in the group's CbC report but may still pose a transfer pricing risk.

- It does not address cases where an MNE group is re-organised into separate groups to such an extent that each newly created group has consolidated group revenue below the agreed proportion of the CbC reporting threshold.

5.3. The changes that would be needed to the BEPS Action 13 package

34. This would require a change to paragraph 52 of the BEPS Action 13 report, to modify the operation of the consolidated group revenue threshold in cases where there are two or more groups under common control.

35. Changes would also be required to the model legislation in the CbC reporting Implementation Package.

Questions for public consultation

6. Are there any benefits from requiring a CbC report to be filed by groups under the common control of an individual or individuals acting together, in addition to those described in this document?
7. Are there any practical challenges to MNE groups from requiring a CbC report to be filed by groups under the common control of an individual or individuals acting together, in addition to those described in this document?
8. From the perspective of groups, what definition of control should be used to determine whether groups are under common control that would balance the dual aims of providing useful information to tax administrations while not placing an excessive burden on groups?
9. From the perspective of groups, what proportion (e.g. one quarter, one third etc.) of the CbC reporting threshold could be used as a threshold, to require a CbC report to be prepared by groups under the common control of an individual or individuals acting together, that would balance the dual aims of providing useful information to tax administrations while not placing an excessive burden on smaller groups?

6. Should the level of the consolidated group revenue threshold be reduced?

36. Paragraph 51 of the BEPS Action 13 report provides that all MNE groups be required to file a CbC report. This is subject to an exemption provided by paragraph 52 for MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of less than EUR 750 million or a near equivalent amount in domestic currency as of January 2015.

37. The policy rationale for this exemption is to limit the scope of CbC reporting to those MNE groups that pose the most potential risk. As stated in paragraph 53 of the BEPS Action 13 report, this threshold is expected to exclude approximately 85 to 90 percent of MNE groups from the requirement to file a CbC report, while MNE groups that remain within the scope of CbC reporting control approximately 90 percent of corporate revenues. That said, it is explicitly provided in paragraph 54 of the report that the appropriateness of a jurisdiction's applicable revenue threshold should be reconsidered as part of the 2020 review.

6.1. The benefits of such an approach

38. Lowering the consolidated group revenue threshold would bring more MNE groups within the scope of CbC reporting. This would provide tax administrations with opportunities to use CbC reports in the risk assessment of a greater number of MNE groups. This is likely to be particularly beneficial for jurisdictions that have no or a small number of resident UPEs of MNE groups with consolidated group revenue above the current threshold. For all tax administrations, access to data on a greater number of MNE groups should improve their ability to use CbC reports for sampling and the development of benchmarks.

6.2. The challenges of such an approach

39. Any material reduction in the consolidated group revenue threshold is likely to significantly increase the number of MNE groups required to prepare and file a CbC report. This could impose a significant resource burden on MNE groups that are smaller than those currently within the scope of CbC reporting. At the same time, given it is estimated that MNE groups controlling around 90 percent of total corporate revenue are already within the scope of CbC reporting, any increase in the proportion of total corporate revenue that would be covered by CbC reporting is unlikely to be as significant.

40. There is also the impact on the resources of tax administrations to consider, which may vary.

- Some tax administrations may find they have a much higher number of CbC reports filed by resident UPEs that would need to be processed, validated and exchanged.
- For most tax administrations, the number of CbC reports received on foreign MNE groups would increase. Until tax administrations are experienced in the handling and effective use of CbC reports, this could be overwhelming and potentially burdensome.

41. There is therefore a risk that a reduction in the consolidated group revenue threshold at this time could impose a burden on MNE groups before tax administrations are in a position to use the data to full effect. In addition, given the other changes that are being considered to improve the effectiveness of CbC reports as part of this review, it may be prudent to implement changes with the existing population of MNE groups within the scope of CbC reporting and consider the impact of these changes, before expanding the scope significantly by reducing the consolidated group revenue threshold.

6.3. The changes that would be needed to the BEPS Action 13 package

42. This would require an amendment to descriptions of the consolidated group revenue threshold in paragraphs 52 and 53 of the BEPS Action 13 report and Article 1 of the model legislation in the CbC Reporting Implementation Package.

Questions for public consultation

10. Are there any benefits from reducing the consolidated group revenue threshold, in addition to those described in this document?
11. Are there any practical challenges to MNE groups resulting from reducing the consolidated group revenue threshold, in addition to those described in this document?

7. Should a jurisdiction with a consolidated group revenue threshold denominated in a currency other than EUR be required or permitted to rebase its threshold periodically?

43. Paragraph 52 of the BEPS Action 13 report provides that an exemption from the general requirement to file a CbC report should apply for MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of less than EUR 750 million or a near equivalent amount in domestic currency as of January 2015. This ensured that, when the BEPS package was agreed in 2015, thresholds applied by different jurisdictions were broadly comparable, irrespective of the currency used.

44. Since January 2015, exchange rates have fluctuated so that thresholds in currencies other than EUR, which were equivalent to EUR 750 million in January 2015, may now have a value that is higher or lower than this amount. This raises a question as to whether non-EUR thresholds should remain at their current level, or whether they should be re-based periodically.

- Maintaining non-EUR thresholds based on the relevant exchange rate as at January 2015 will ensure consistent treatment of resident UPEs of MNE groups. However, over time it is likely this will result in a divergence in the thresholds applied by different jurisdictions, as exchange rates move from their January 2015 level. In particular, jurisdictions that introduced CbC reporting requirements after 2016 have questioned the relevance of tying their threshold to a historic exchange rate.
- Re-basing non-EUR thresholds to ensure equivalency with EUR 750 million using current exchange rates will ensure greater consistency in the thresholds used by different jurisdictions on an ongoing basis. However, this will introduce volatility in the non-EUR threshold applied by a particular jurisdiction. This would mean that a resident UPE with the same level of consolidated group revenue in local currency could fall in and out of the scope of CbC reporting, as the euro exchange rate fluctuates. It is noted that a number of jurisdictions with a non-EUR domestic currency have already in effect adopted this approach, by introducing a EUR-denominated threshold into their domestic law (e.g. Canada, New Zealand and the United Kingdom).

45. The views of stakeholders are sought as to the advantages or disadvantages of the approaches described below. To provide certainty for MNE groups and consistency with the approach adopted in the Action 13 report, unless otherwise stated, references to a non-EUR threshold being rebased mean an adjustment to reflect the exchange rate as of January of the year preceding the start of the relevant reporting fiscal year (e.g. January 2020 for reporting fiscal years commencing on or after 1 January 2021).

- Option 1: A jurisdiction with a non-EUR threshold would be permitted to re-base its threshold at any time. In effect, this would allow a jurisdiction to make a choice as to whether to prioritise consistency for resident UPEs or comparability with other jurisdictions.
- Option 2: A jurisdiction with a non-EUR threshold would be permitted to re-base its threshold at a set point every five years (e.g. as at January 2020 for reporting

fiscal years commencing on or after 1 January 2021; as at January 2025 for reporting fiscal years commencing on or after 2026; etc.). This shares many of the benefits of Option 1, but introduces greater consistency in the timing of changes to thresholds adopted by jurisdictions.

- Option 3: A jurisdiction with a non-EUR threshold would be required to re-base its threshold at a set point every five years, if the re-based threshold would be more than an agreed percentage lower than the jurisdiction's current threshold. Under this option re-basing would be periodic based on a set schedule and there would be no requirement for a jurisdiction to re-base its threshold if exchange rate movements had been modest or where the current threshold is lower than EUR 750 million in domestic currency. It would however ensure that where, due to exchange rate movements, a jurisdiction's threshold is now materially higher than EUR 750 million in domestic currency, the threshold is rebased to improve comparability internationally.
- Option 4: A jurisdiction with a non-EUR threshold would be required to re-base its threshold at a set point every five years, if the re-based threshold would be more than an agreed percentage higher or lower than the jurisdiction's current threshold. Under this option re-basing would be periodic based on a set schedule and there would be no requirement for a jurisdiction to re-base its threshold if exchange rate movements had been modest. It would however ensure that where, due to exchange rate movements, a jurisdiction's threshold is now materially higher or lower than EUR 750 million in domestic currency, the threshold is rebased to improve comparability internationally.
- Option 5: A combination of the options proposed above, that would allow a jurisdiction to re-base its threshold either at any time or every five years, but would require re-basing in certain circumstances (e.g. a combination of either Option 1 or Option 2, and either Option 3 or Option 4).
- Option 6: A jurisdiction with a non-EUR threshold would be required or permitted to apply a dynamic threshold which would be equivalent to EUR 750 million using an exchange rate set by reference to the MNE group's reporting fiscal year. For example, one alternative would be to apply the average exchange rate for the calendar month 12 months before the start of the reporting fiscal year (so an MNE group with a reporting fiscal year commencing 1 January 2020 would apply a threshold based on the average exchange rate for January 2019; an MNE group with a reporting fiscal year commencing 1 March 2020 would apply a threshold based on the average exchange rate for March 2019 etc.). This option could ensure ongoing comparability of thresholds denominated in different currencies, without the need for re-basing on specific dates or trigger events. On the other hand, it could also reduce comparability if similar MNE groups with UPE's tax resident in the same jurisdiction but which have different fiscal year ends are treated differently because of short term fluctuations in the applicable exchange rate. It would also require a tax administration to have mechanisms in place to confirm the correct exchange rate was applied in determining the applicable threshold.

7.1. The benefits of such an approach

46. The BEPS Action 13 report establishes a minimum standard supported by all members of the Inclusive Framework on BEPS. This includes a consolidated group revenue threshold of EUR 750 million, but permits a jurisdiction to use a near equivalent threshold in domestic currency as of January 2015. This ensured that, for the first year of CbC reporting (for fiscal years commencing on or after 1 January 2016), the thresholds applied by different jurisdictions to consolidated group revenue in the immediately preceding fiscal year are comparable.

47. The options described above provide different solutions to improve the ongoing equivalency of thresholds used in different jurisdictions, taking into account the burden on MNE groups and jurisdictions if the threshold in a jurisdiction changed too frequently. This will ensure that, broadly, MNE groups which exceed the EUR 750 million threshold (or near equivalent in domestic currency which may be determined periodically according to a schedule and/or at the option of the UPE jurisdiction) will be required to file a CbC report for the following fiscal year.

48. From the perspective of UPE jurisdictions, it will improve ongoing comparability with the thresholds applied by other members of the Inclusive Framework on BEPS. From the perspective of constituent entity jurisdictions, it will better ensure that CbC reports are received on comparable foreign MNE groups, irrespective of the jurisdiction where the UPE of each MNE group is resident.

49. Permitting or requiring the re-basing of non-EUR thresholds would also improve consistency in the position of jurisdictions with non-EUR domestic currencies which nevertheless apply a threshold denominated in EUR and those which apply a threshold denominated in domestic currency.

7.2. The challenges of such an approach

50. Re-basing the consolidated group threshold in a particular jurisdiction may reduce consistency and certainty for UPEs resident in that jurisdiction. Depending upon the prevailing exchange rate at the date when a threshold is re-based, an MNE group may find itself coming into the scope of a CbC reporting filing obligation, or falling outside the scope of one, even though its consolidated group revenue remains at the same level, reported in the jurisdiction's domestic currency. For tax administrations, this may result in gaps in CbC reporting information that may make using data for risk assessment more difficult (although such gaps may in any case arise as an MNE group's consolidated group revenue in its reporting currency is compared against the applicable consolidated group revenue threshold that may be in a different currency).

51. From the perspective of jurisdictions, any change to the level of the consolidated group revenue threshold may, depending upon the structure of a jurisdiction's law, require a legislative amendment involving a parliamentary process, which may be time consuming. This burden may be reduced if a jurisdiction is able to delegate power to amend the level or the threshold to an appropriate Ministry or government body, or could include in its law a provision that automatically re-bases the threshold periodically or on certain trigger events.

7.3. The changes that would be needed to the BEPS Action 13 package

52. This would require an amendment to paragraph 52 of the BEPS Action 13 report and Article 1 of the CbC Reporting Implementation Package.

Questions for public consultation

12. Are there any benefits from each of the options for re-basing a non-EUR denominated threshold, in addition to those in this document?
13. Are there any practical challenges to MNE groups from each of the options for re-basing a non-EUR denominated threshold, in addition to those in this document?
14. Option 3 and Option 4 refer to an agreed percentage movement in the value of a jurisdiction's consolidated group revenue threshold that would trigger a requirement to re-base the threshold. From the perspective of MNE groups, at what level should this percentage be agreed (e.g. 5%; 10%) in order to balance the goals of consistency and comparability?
15. Are there any other options for re-basing a non-EUR denominated threshold that should be considered, in addition to those in this document?

8. Should the threshold for Excluded MNE Groups take into account more than one year of consolidated group revenue?

53. Paragraph 52 of the BEPS Action 13 report provides an exemption from the general filing requirement for MNE groups based on their consolidated group revenue in the immediately preceding fiscal year. This threshold is relatively straightforward to apply, but the fact that it operates as an annual test raises several issues. For example, where an MNE group has consolidated group revenue above the threshold for a single fiscal year, it may be burdensome for the MNE group to be required to put in place systems to gather information and prepare and file a CbC report for one fiscal year, if it is unlikely to ever have to do so again or only rarely. Also, where an MNE group has consolidated group revenue above the threshold in some fiscal years and below the threshold in others, this would lead to gaps in the CbC reports obtained by tax administrations, with respect to the fiscal years where the MNE group is below the threshold. However, in this situation the level of transfer pricing risk posed by the MNE group is unlikely to vary materially from year to year, and the MNE group would need to have systems in place to prepare and file a CbC report for the fiscal years when it is above the threshold.

54. The Inclusive Framework invites comments from stakeholders on a change to the operation of the consolidated group revenue threshold to take into account an MNE group's revenue for more than one fiscal year, which could be done in a number of ways.

- Option 1: An MNE group could be required to file a CbC report if its consolidated group revenue is above the threshold for the two immediately preceding fiscal years (or other number of years to be determined).
- Option 2: An MNE group could be required to file a CbC report if its consolidated group revenue is above the threshold for two or more of the preceding four fiscal years (or other number of years to be determined).
- Option 3: An MNE group could be required to file a CbC report if its average consolidated group revenue for the preceding four fiscal years is above the threshold (or other number of years to be determined).

55. Each of these options could be supplemented with a provision to permit an MNE group to file a CbC report on a voluntary basis if it falls outside of the scope of CbC reporting but anticipates being required to file a CbC report in future. For newly established MNE groups (e.g. where a large MNE group disposes of a number of constituent entities that form a new MNE group with consolidated group revenue above the threshold), a transitional approach that takes into account any guidance that has been issued would need to be applied.

8.1. The benefits of such an approach

56. Each of these options has a number of benefits.

- Option 1 is likely to be the most straightforward to operate in practice. Options 2 and 3 are more complex and require consideration of an MNE group's consolidated group revenue over a longer period.

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- Options 1 and 2 would prevent an MNE group which generally has consolidated group revenue below the threshold from being required to file a CbC report simply because it exceeds the threshold for a single fiscal year. Option 3 would reduce the likelihood of this but may not prevent it entirely (i.e. where consolidated group revenue for one fiscal year is so high that it takes the average above the threshold). The processes an MNE group must implement to prepare and file a CbC report may be burdensome if a CbC report is only required for a single fiscal year.
 - Option 2 would also prevent an MNE group which has regular consolidated group revenue close to the threshold falling in and out of the scope of CbC reporting on a regular basis, creating gaps in the information available to tax administrations. Under this option, an MNE group with consolidated group revenue above the threshold will remain subject to CbC reporting even if it falls below the threshold for 1-2 fiscal years at a time. Option 3 would reduce this risk but would not eliminate it entirely (i.e. where consolidated group revenue for one fiscal year is so low it takes the average below the threshold). Option 1 could in fact make this issue worse, if an MNE group could fall outside of CbC reporting when it has consolidated group revenue below the threshold, but must then have consolidated group revenue above the threshold for two years before being required to file a CbC report again.

8.2. The challenges of such an approach

57. By requiring consideration of the results of more than one fiscal year, these options do in principle increase complexity in applying the consolidated group revenue threshold. However, for the majority of MNE groups, which have consolidated group revenue which is consistently above the threshold or below the threshold, there should be no impact. For MNE groups which are sometimes above the threshold and sometimes below the threshold, each option is intended to reduce the impact of this on both the MNE groups and tax administrations.

8.3. The changes that would be needed to the BEPS Action 13 package

58. Paragraph 52 of the BEPS Action 13 report would be amended to describe the operation of the revised threshold. The definition of an “Excluded MNE Group” in the model legislation and the competent authority agreements in the CbC Reporting Implementation Package would also require amendment.

Questions for public consultation

16. For each of the options for applying a threshold that takes into account consolidated group revenue of more than one fiscal year described in this note, are there any benefits, in addition to those in this document?
17. For each of the options for applying a threshold that takes into account consolidated group revenue of more than one fiscal year, are there any practical challenges to MNE groups, in addition to those in this document?
18. Are there any other changes to the operation of the consolidated group revenue threshold which should be considered, in addition to those in this document?

9. Should extraordinary income be included in consolidated group revenue?

59. Paragraph 52 of the BEPS Action 13 report provides an exemption from the general filing requirement for MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of less than EUR 750 million or near equivalent in domestic currency as of January 2015. There is no further explanation provided in the BEPS Action 13 report as to which items are to be included in consolidated group revenue. However, interpretative guidance issued in April 2017 makes clear that a jurisdiction may require inclusion of extraordinary income¹ in consolidated group revenue if those items are presented in the consolidated group statements under applicable accounting standards. It is noted that, for the purposes of completing Table 1, this guidance makes clear that extraordinary income is included in Revenues.

60. Jurisdictions currently differ in their practice as to whether extraordinary income is required to be included or excluded in consolidated group revenue, whereas it would be beneficial for the coherence of the minimum standard for a consistent approach to be applied. For the purposes of this consultation, it is suggested that extraordinary income be included in consolidated group revenue, including where these are recognised separately in the consolidated financial statements of the MNE group. This would promote consistency with the treatment of MNE groups using accounting standards which do not require or permit the separate recognition of extraordinary income, or which do not have a concept of extraordinary income.

9.1. The benefits of such an approach

61. Accounting standards differ in the extent and circumstances in which they require or permit an MNE group to separately recognise extraordinary items in its consolidated financial statements. This means that there may be items which are treated as extraordinary income under some accounting standards but which are presented together with other income under other accounting standards. Excluding items from consolidated group revenue because of their designation as extraordinary under accounting standards that differ in their approach, rather than based on the nature of the income itself, may mean that comparable MNE groups are required to take into account different items when applying the consolidated group revenue threshold, depending upon the accounting standards used.

9.2. The challenges of such an approach

62. As described in paragraph 53 of the BEPS Action 13 report, the intention of the consolidated group revenue threshold is to limit the obligation to file a CbC report to the largest MNE groups that control the majority of corporate revenues. However, by definition, extraordinary income reflects the results of unusual or one-off events that are not part of an MNE group's normal business activity. As such, including extraordinary

¹ For these purposes, the term “extraordinary income” is taken to include other terms used by accounting standards to reflect a similar concept (such as exceptional income, unusual income etc.).

income within consolidated group revenue when determining whether an MNE group should be required to file a CbC report could mean that an MNE group is above the threshold for a single fiscal year due to events that are not part of its normal business, and which may affect only one jurisdiction where it has activities. This issue could however be addressed by changing the operation of the consolidated group revenue threshold to take into account an MNE group's revenues over more than one fiscal year. Options for this are considered elsewhere in this public consultation document.

63. From the perspective of an MNE group, this could impose a burden on an MNE group that is required to implement systems to comply with a CbC reporting obligation for a single period, and is not required to file a CbC report again, as its consolidated group revenue is typically below the threshold. From the perspective of a tax administration, one benefit of CbC reports as a source of data for risk assessment will be the ability to look at how the information contained in an MNE group's CbC report changes over time.

64. Depending upon the accounting standards applied by the UPE of an MNE group, excluding income that is categorised as extraordinary from consolidated group revenue would reduce the likelihood of MNE groups falling within the scope of CbC reporting as a result of an event that is not part of its normal business. It would also allow an MNE group to apply the threshold without making adjustments to include extraordinary items.

65. It is noted however that these challenges may already exist for MNE groups that prepare consolidated financial statements using accounting standards that do not require or permit the separate recognition of extraordinary income, or which do not have a concept of extraordinary income.

9.3. The changes that would be needed to the BEPS Action 13 package

66. Paragraph 52 of the BEPS Action 13 report could be amended to make clear that consolidated group revenue includes extraordinary income (and similar categories under different accounting standards), where this is separately recognised in an MNE group's consolidated financial statements under the applicable accounting standards.

Questions for public consultation

19. Are there any benefits from including extraordinary income in consolidated group revenue, in addition to those in this document?
20. Are there any practical challenges to MNE groups from excluding extraordinary income in consolidated group revenue, in addition to those in this document?
21. From the perspective of MNE groups, which approach to this issue (e.g. including extraordinary income in consolidated group revenue if these items are separately presented in the consolidated group statements; excluding extraordinary income from consolidated group revenue if these items are separately presented in the consolidated group statements; or some other approach) would balance the dual aims of relative simplicity and a consistent outcome for MNE groups preparing consolidated financial statements under different accounting standards?

10. Should gains from investment activity be included in consolidated group revenue?

67. As mentioned above, paragraph 52 of the BEPS Action 13 report provides an exemption from the general filing requirement for MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of less than EUR 750 million or near equivalent in domestic currency as of January 2015. There is no further explanation provided in the BEPS Action 13 report as to which items are to be included in consolidated group revenue. However, interpretative guidance issued in April 2017 makes clear that a jurisdiction may require inclusion of gains from investment activity in consolidated group revenue if those items are presented in the consolidated group statements under applicable accounting standards. It is noted that, for the purposes of completing Table 1, this guidance makes clear that gains from investment activity are included in Revenues.

68. Jurisdictions currently differ in their practice as to whether to require gains from investment activity to be included or excluded in consolidated group revenue, whereas it would be beneficial for the coherence of the minimum standard for a consistent approach to be applied. For the purposes of this consultation, it is suggested that gains from investment activity be included in consolidated group revenue, including where these are reported separately from other revenue items in the consolidated financial statements of the MNE group.

10.1. The benefits of such an approach

69. Although gains from investment activity, such as interest income and dividends from investments, may not be part of an MNE group's operating activities, they can still form an important and enduring aspect of its business. For example, interest income on surplus cash may be an important source of revenue to an MNE group involved in activities that give rise to significant cash balances.

70. As described in paragraph 53 of the BEPS Action 13 report, the intention of the consolidated group revenue threshold is to limit the obligation to file a CbC report to the largest MNE groups that control the majority of corporate revenues. In light of this aim, it seems appropriate that gains from investment activity should be included in consolidated group revenue when applying the CbC reporting threshold.

71. Including gains from investment activity in consolidated group revenue will ensure that MNE groups are treated consistently, irrespective of whether their revenue is derived from operating or investment activities, or how these forms of income are categorised for financial reporting purposes. This is beneficial as these forms of revenue seem equally relevant in terms of the assessment of transfer pricing and other BEPS-related risks that may be posed by MNE groups to jurisdictions in which they have operations.

10.2. The challenges of such an approach

72. While gains from investment activity are an enduring part of some MNE group's activities, there may be others where a high level of investment income could cause an MNE group to be above the threshold for a single fiscal year. This seems unlikely to be the case for the majority of MNE groups. Where it does arise, this issue could be addressed by

changing the operation of the consolidated group revenue threshold to take into account an MNE group's revenues over more than one fiscal year. Options for this are considered elsewhere in this document.

10.3. The changes that would be needed to the BEPS Action 13 package

73. Paragraph 52 of the BEPS Action 13 report could be amended to make clear that consolidated group revenue includes gains from investment activity.

Questions for public consultation

22. Are there any benefits from including gains from investment activity in an MNE group's consolidated financial statements, in addition to those in this document?
23. Are there any practical challenges to MNE groups from including gains from investment activity in an MNE group's consolidated group revenue, in addition to those in this document?
24. From the perspective of MNE groups, which approach to this issue (e.g. including gains from investment activity in consolidated group revenue if these items are separately presented in the consolidated group statements; excluding gains from investment activity from consolidated group revenue if these items are separately presented in the consolidated group statements; or some other approach) would balance the dual aims of relative simplicity and a consistent treatment of MNE groups preparing consolidated financial statements under different accounting standards?

11. In cases where the immediately preceding fiscal year of an MNE Group is of a period other than 12 months, should the consolidated group revenue threshold (or, alternatively, consolidated group revenue in the immediately preceding fiscal year) be adjusted in determining whether the MNE Group is an Excluded MNE Group?

74. Paragraph 52 of the BEPS Action 13 report provides an exemption from the general filing requirement for MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of less than EUR 750 million or near equivalent amount in domestic currency as of January 2015. However, where the preceding fiscal year is less or more than 12 months, comparing consolidated group revenue for that fiscal year against a threshold of EUR 750 million may produce a result that is distortive and inconsistent with the aim of the minimum standard.

Example 1

MNE A prepares its consolidated financial statements to 31 December, and has annual consolidated group income of EUR 1.4bn, which accrues evenly throughout the fiscal year. MNE A files a CbC report for its fiscal years commencing on 1 January 2016 and 1 January 2017, based on the consolidated group revenue in its immediately preceding fiscal year.

At the start of 2018 MNE A changes its financial reporting year end to 30 June. MNE A files a CbC report for its short fiscal year commencing on 1 January 2018, as its consolidated group revenue for the preceding fiscal year commencing on 1 January 2017 is EUR 1.4bn, which is above the threshold.

In determining whether it is an excluded MNE group for its fiscal year commencing 1 July 2018, MNE A must compare its consolidated group revenue in the immediately preceding fiscal year against the threshold. If this is done without any adjustment to take into account the length of the preceding fiscal year, MNE A's consolidated group revenue for the short fiscal year of EUR 700 million would be compared against the full threshold of EUR 750 million. This could mean that MNE A is an excluded MNE group for its fiscal year commencing 1 July 2018, despite having annual consolidated revenue of EUR 1.4 billion at all times.

Example 2

MNE B is a newly established MNE group with annual consolidated group revenues of EUR 600 million. For its first financial reporting period, MNE B prepares consolidated financial statements for an 18 month period from 1 January 2017 to 30 June 2018, which included total consolidated group revenue for the entire 18 month period of EUR 900 million. After this first period, consolidated financial statements are prepared annually with a fiscal year of 1 July to 30 June.

In determining whether it is an excluded MNE group for its fiscal year commencing 1 July 2018, MNE B must compare its consolidated group revenue in the immediately preceding

fiscal year against the threshold. If this is done without any adjustment to take into account the length of the preceding fiscal year, MNE B's consolidated group revenue for the long fiscal year of EUR 900 million would be compared against the annual threshold of EUR 750 million. This could mean that MNE B is required to prepare a CbC report for its fiscal year commencing 1 July 2018, despite having annual consolidated revenue of EUR 600 million at all times. This would require MNE B to implement processes to prepare and file a CbC report for one reporting fiscal year, even though it will not be required to file a CbC report in future periods.

75. Interpretative guidance issued in November 2017 provided that, in cases where the preceding fiscal year of an MNE group is less than 12 months, jurisdictions could adopt any of three approaches:

1. use the actual total consolidated group revenue obtained by the MNE group for the short accounting period
2. adjust the consolidated group revenue for the short accounting period to reflect the consolidated group revenue that would correspond to a 12 month accounting period
3. calculate the pro-rata share of the EUR 750 million threshold that would correspond to the short accounting period.

76. The Inclusive Framework invites comments from stakeholders on jurisdictions committing to apply one of either approach 2 or 3 (which in substance should have the same effect), but no longer to apply approach 1. The same approach should also be applied in cases where the preceding fiscal year of an MNE group is more than 12 months.

11.1. The benefits of such an approach

77. There are two key benefits from such an approach.

- First, it achieves the aims of the minimum standard that the only exemption should apply to MNE groups with annual consolidated group revenue of less than EUR 750 million in the immediately preceding fiscal year. If the consolidated group revenue in the preceding fiscal year is not an annual figure, then either the threshold or consolidated group revenue should be adjusted to compensate for this. There is no sound policy basis to exempt an MNE group from the requirement to file a CbC report, or oblige an MNE group to file a CbC report, solely as a result of a change in year-end in the preceding fiscal year.
- Second, it would ensure equity between similar MNE groups. It would be an unfair outcome if two comparable MNE groups with a similar level of annual consolidated group revenue are treated differently, as a result of the approaches adopted on this issue by the jurisdiction in which the UPE of each MNE group is resident.

11.2. The challenges of such an approach

78. Such an approach would require some jurisdictions to introduce a change to legislation or guidance on the determination of an Excluded MNE Group.

11.3. The changes that would be needed to the BEPS Action 13 package

79. Paragraph 52 of the BEPS Action 13 report could be amended to make clear that the consolidated group revenue threshold is an annualised figure and application of the threshold should be modified in cases where the immediately preceding fiscal year is not 12 months. A similar clarification could be made in Article 1 of the model legislation in the CbC Reporting Implementation Package.

Questions for public consultation

25. Where the preceding fiscal year is less or more than 12 months, are there any benefits from a jurisdiction requiring an adjustment to (a) consolidated group revenue of the preceding fiscal year or (b) the consolidated group revenue threshold, in determining whether an MNE group is an excluded MNE group, in addition to those in this document? Otherwise, it would appear a jurisdiction could take either approach.
26. Are there any practical challenges to MNE groups in applying the consolidated group threshold as described in this document, in cases where the preceding fiscal year is less or more than 12 months, in addition to those in this document?

Chapter 3. Topics concerning the content of a CbC report

This chapter includes a discussion on topics concerning the content of a CbC report.

- Should information in Table 1 be presented by entity rather than by tax jurisdiction?
- Should consolidated data rather than aggregate data be used in Table 1?
- Should additional columns be added to Table 1?
- Should changes be made to how constituent entities that are not resident in any tax jurisdiction for tax purposes are categorised for CbC reporting purposes and how information on these entities is reported in Table 1?
- Should fields required in the XML schema (e.g. tax identification number) that are not in the CbCR template in the BEPS Action 13 report be incorporated into the template?
- Should standardised industry codes be included in Table 2?
- Should pre-determined fields be added to Table 3, in addition to free text?

12. Should information in Table 1 be presented by entity rather than by tax jurisdiction?

80. The 2014 public consultation on BEPS Action 13 included a CbC report template with financial information provided for each constituent entity in an MNE group. During the public consultation, a number of stakeholders provided comments supporting the reporting of information by entity, whereas others highlighted challenges posed by such an approach and argued for reporting of data by tax jurisdiction. After consideration of both approaches, reporting of financial data by entity was not adopted and the BEPS Action 13 report includes at paragraph 24 a requirement for the reporting of aggregate tax jurisdiction-wide information. Table 1 of the CbC report template reflects this. Only information in Table 2 is required to be provided by constituent entity.

81. The Inclusive Framework invites comments from stakeholders on amendments to the BEPS Action 13 report to require Table 1 to be completed with information on each constituent entity rather than with aggregate tax jurisdiction-wide information.

12.1. The benefits of such an approach

82. Where an MNE group has a small number of constituent entities in a jurisdiction, which are engaged in the same or similar activities, information prepared on a tax jurisdiction-wide level may be sufficient for the purposes of a high-level risk assessment. However, where an MNE group has a large number of constituent entities in a jurisdiction, or where an MNE group has constituent entities involved in different activities in a jurisdiction, tax administrations face a challenge in understanding how the tax jurisdiction-wide information in Table 1 corresponds with the information on the main business activities of each constituent entity in Table 2.

83. Preparing Table 1 on an entity-by-entity basis could reduce this challenge. Where an MNE group has multiple constituent entities in a jurisdiction, this could give a tax administration a better understanding of the scale and profitability of each entity, the extent to which its activities are taxed, and the level of its employees and assets. This would be particularly helpful in the risk assessment of MNE groups where each constituent entity has only one main business activity, or has related main business activities.

12.2. The challenges of such an approach

84. In determining whether to introduce this change, the potential benefit from a risk assessment perspective would need to be weighed carefully against the burden on MNE groups from having to report and on tax administrations from having to make use of a potentially very large collection of data. This section reflects the key concerns expressed by stakeholders during the 2014 public consultation.

85. From the perspective of an MNE group, if it has multiple constituent entities in a jurisdiction and there is no existing requirement for separate entity financial statements to be prepared, then the MNE group may not currently hold Table 1 information for each constituent entity. Even where the information does currently exist, it may be challenging for some MNE groups to obtain, validate and report the information in Table 1. It is noted that many MNE groups have only recently completed (or are in the process of completing)

systems to report data on a tax jurisdiction-wide basis and this could mean a significant change to these systems is required, in order to provide a significant level of additional information which may not all be needed for the purposes of a high level assessment of transfer pricing and other BEPS-related risks, including amongst other factors the terms and conditions surrounding transactions within an MNE group.

86. From a tax administration perspective, while having information on each constituent entity will be useful in understanding the position of particular entities that pose a potential BEPS risk, it may also raise other challenges. There may be cases where assets or employees attributable to one constituent entity are also engaged in activities of other constituent entities in the jurisdiction, or where the MNE group's tax in a jurisdiction is determined on a consolidated basis rather than for each entity.

87. It is noted that preparing Table 1 on an entity-by-entity basis may be less beneficial in the risk assessment of MNE groups in which constituent entities have multiple different activities. In these cases a tax administration will continue to face a challenge in understanding how the Table 1 information on the constituent entity corresponds to the entity's various activities.

88. There may also be cases where an indicator of possible BEPS risk (or an indicator that no BEPS risk is present) is only apparent when the overall position of an MNE group in a jurisdiction is taken into account. This may be particularly the case where an MNE group has a large number of constituent entities in a jurisdiction. A related risk concerns MNE groups with a very large number of constituent entities overall, which could mean the level of data contained in Table 1 is overwhelming. In each case, it may be that a tax administration needs to re-aggregate much of the data in Table 1 by jurisdiction, in order for the data to be usable and useful.

89. Furthermore, if each constituent entity is reported separately in Table 1, related party revenue will include receipts from constituent entities resident in the same jurisdiction as well as those from constituent entities resident in other jurisdictions. This is one of the main concerns with the current use of aggregate data in Table 1 and this issue will not be addressed through a change to entity-by-entity reporting. However, this issue could be addressed if consolidated tax jurisdiction-wide information was provided in Table 1, and this is considered elsewhere in this document.

90. Finally, it is clear from the BEPS Action 13 report that the information contained in a CbC report may only be used for assessing high level transfer pricing and other BEPS-related risks and, where appropriate, for economic and statistical analysis. It should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and full comparability analysis, and on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. Providing information in Table 1 by constituent entity may go beyond what is needed, given these limits on the use of information.

12.3. The changes that would be needed to the BEPS Action 13 package

91. The main changes that would be required would be to paragraph 24 of the BEPS Action 13 report, to Table 1 of the CbC report template and to Article 4 of the model legislation in the CbC reporting Implementation Package. Further consequential changes will be required throughout the BEPS Action 13 report and subsequent interpretative guidance.

Questions for public consultation

27. Are there any benefits from including constituent entity information in Table 1, in addition to those in this document?
28. Are there any practical challenges or other concerns to MNE groups from including constituent entity information in Table 1, in addition to those in this document?

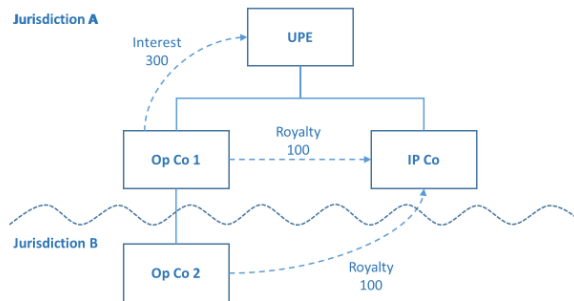
13. Should consolidated data rather than aggregate data be used in Table 1?

92. The 2014 public consultation on BEPS Action 13 included a discussion as to whether a CbC report should require aggregate tax jurisdiction-wide information (“aggregate data”) or consolidated tax jurisdiction-wide information (“consolidated data”) in Table 1. During the public consultation, a number of stakeholders provided comments supporting the use of consolidated data, whereas others highlighted challenges posed by such an approach and argued for reporting of aggregate data. After consideration of both approaches, it was ultimately decided to require aggregate data and this is provided in paragraph 24 of the BEPS Action 13 report. However, following representations from both MNE groups and some tax administrations, the Inclusive Framework invites comments from stakeholders on requiring consolidated data to be provided in Table 1.

93. The principle behind aggregate data is simply to combine (aggregate) the separate information on each constituent entity in a jurisdiction. No adjustment is made for transactions between constituent entities in the same jurisdiction.

94. In contrast, consolidated data in effect treats the constituent entities of an MNE group in a particular jurisdiction as a single economic entity. Therefore, in combining the separate information on each constituent entity in a jurisdiction, an adjustment is made for transactions between constituent entities in that jurisdiction. No adjustment is made for transactions with constituent entities in other jurisdictions. A simple example to illustrate the difference between using aggregate data and consolidated data in Table 1 is set out below.

Example



In this example, an MNE group has constituent entities in two jurisdictions. The MNE group's ultimate parent entity (UPE), its IP holding company (IP Co) and one of its operating companies (Op Co 1) are resident in Jurisdiction A. A second operating company (Op Co 2) is resident in Country B. In 20XX, Op Co 1 and Op Co 2 each pay royalties of 100 to IP Co. Op Co 1 also pays interest of 300 to UPE. These are the only intra-group payments in the year.

In preparing its CbC report for the fiscal year 20XX, if aggregate data is used, the MNE group will include related party revenues in Jurisdiction A of 500 in Table 1, including all payments between constituent entities resident in Jurisdiction A. This is the approach required in the BEPS Action 13 report.

In contrast, if consolidated data was used, the MNE group would include Related Party Revenues in Jurisdiction A of 100 in Table 1, including only those payments received from constituent entities outside the jurisdiction.

95. It is important to note that references to consolidated data in Table 1 do not refer to data taken from an MNE group's consolidated financial statements (in which transactions between all constituent entities are eliminated and not only those in the same jurisdiction) or its consolidation reporting package (which includes information on each constituent entity, and on adjustments necessary to eliminate transactions between constituent entities). An MNE group's consolidation reporting package may be used as a source of data for Table 1 prepared using either aggregate data or consolidated data.

96. Interpretative guidance was issued in July 2017 which provides that, while the BEPS Action 13 report requires the use of aggregate data in preparing Table 1, consolidated data may be used in specific circumstances. In the event that the approach contemplated in this section is not adopted, this guidance would continue to apply.

13.1. The benefits of such an approach

97. The two potential differences between the content of Table 1 prepared using aggregate data or prepared using consolidated data are as follows. It is anticipated that, in general, the remaining columns in Table 1 should be the same under each approach.

- Perhaps the most important difference is likely to be in the related party revenue column, as aggregate data will include all revenues received from constituent entities in the same jurisdiction, whereas these revenues will not be included using

consolidated data. The same difference will also be reflected in the total revenues column.

- The other column in Table 1 which could be affected is stated capital, as aggregated data could include several times what is in effect the same capital, if this is invested in two or more constituent entities in the same jurisdiction. This issue should not arise if consolidated data is used.

98. By ignoring transactions between constituent entities in the same jurisdiction, consolidated data focuses solely on results from transactions with third parties and with other parts of the MNE group. This provides a more accurate picture of an MNE group's results in each jurisdiction where it has operations and, in the majority of cases, is likely to be more useful to a tax administration in conducting a high level assessment of transfer pricing risk and other BEPS related risks or in conducting economic and statistical analysis. In contrast, aggregate data can distort a number of key metrics used by tax administrations.

- Profit margins (profit before tax/total revenue) may be reduced.
- The volume or proportion of related party revenues (related party revenue/total revenue) may be increased.
- Revenue per employee (total revenue/number of employees) and revenue per unit of tangible assets (total revenue/tangible assets) may be increased, while profit per employee (profit before tax/number of employees) and profit per unit of fixed assets (profit before tax/tangible assets) will be unaffected, making these measures more difficult to compare and interpret usefully.
- Return on capital (profit before tax/stated capital) may be reduced.

99. In each case, the issues described above would be avoided if consolidated data was used.

100. As well as providing a more accurate picture of an MNE group's results, consolidated data provides tax administrations with important information on the level of revenue from constituent entities in other jurisdictions, which has the potential to pose a BEPS risk to those jurisdictions. Consolidated data does not include information on revenue from constituent entities in the same jurisdiction, but this is unlikely to be relevant to tax administrations in other jurisdictions. This information may be useful for the tax administration in the jurisdiction in question, but as it concerns related party payments within that jurisdiction, this information may be available from other sources.

101. Consolidated data would also provide consistent data on comparable groups irrespective of the legal structure adopted in a particular jurisdiction, which may not always be the case with aggregate data. For example, MNE Group A and MNE Group B have similar businesses, but in a particular jurisdiction MNE Group A operates through a number of entities, whereas MNE Group B operates through a single entity with a number of divisions.

- Using aggregate data, any payments between MNE Group A's constituent entities in the jurisdiction would be included in related party revenue, whereas payments between MNE Group B's divisions would not be included (as these payments are made within the same entity). Depending on the size of these payments, MNE Group A's related party revenue in the jurisdiction could be many times larger than

that of MNE Group B. However, from the two MNE group's CbC reports it would not be apparent that this resulted from payments within the jurisdiction.

- Using consolidated data, any payments between MNE Group A's constituent entities in the jurisdiction would be excluded from related party revenue. MNE Group A's related party revenue in the jurisdiction would therefore be determined in a way that is comparable to that of MNE Group B. Despite their different legal structures, the CbC reports of MNE Group A and MNE Group B would contain the same data in Table 1.

102. A number of MNE groups and business associations have also made representations that, for many MNE groups, the use of consolidated data would be more straightforward than aggregated data, or at least not significantly more challenging. In any case, these MNE groups pointed out that the benefits to an MNE group of its CbC report containing an accurate picture of its activities were sufficient to support a change to consolidated data. This is an important consideration, although the proportion of MNE groups for which this is correct is not known.

13.2. The challenges of such an approach

103. While the benefits of using consolidated data in Table 1 primarily concern ensuring that information is as useful as possible in conducting a risk assessment, the challenges in adopting such an approach are mainly practical. During the 2014 public consultation, a number of stakeholders submitted comments that using aggregate data was significantly less burdensome on MNE groups, and this was persuasive in deciding the approach adopted in the BEPS Action 13 report. For example, several stakeholders commented that an approach that required an MNE group to distinguish between related party revenues and third party revenues should be possible, but to require related party revenues to be treated differently depending upon whether they were received from a constituent entity in the same jurisdiction or in a different jurisdiction could prove excessively burdensome on MNE groups. The preparation of consolidated data would require this to be done, in that related party revenues would include revenues received from constituent entities in other jurisdictions, but not from those in the same jurisdiction. As has been noted above, it has also been submitted that for some MNE groups consolidated data may be either easier or not significantly more difficult to provide, or that the benefits of using consolidated data outweigh the burden.

104. The main challenge of a change from aggregate data to consolidated data in preparing Table 1 is likely to be that a large number of MNE groups have recently implemented systems to capture and report data on an aggregate basis. It is not known how challenging this would be to change, and this is likely to vary.

105. Where an MNE group has a significant level of related party transactions between constituent entities in the same jurisdiction, this will not be reflected in Table 1 if consolidated data is used. However, the purpose of a CbC report is to provide tax administrations with information on the global spread of an MNE group's activity. Where a tax risk arises as a result of related party transactions within a jurisdiction, the tax administration in that jurisdiction may have other tools available to obtain this information.

13.3. The changes that would be needed to the BEPS Action 13 package

106. Changes would be required to paragraph 24 of the BEPS Action 13 report and to Article 4 of the model legislation in the CbC reporting Implementation Package.

Questions for public consultation

29. Are there any benefits from requiring the use of consolidated data in Table 1, in addition to those in this document?
30. Are there any practical challenges or other concerns to MNE groups from requiring the use of consolidated data in Table 1, in addition to those in this document?

14. Should additional columns be added to Table 1?

107. The 2014 public consultation on BEPS Action 13 included a discussion as to the content of a draft CbC report template. During the public consultation, there were a number of comments made noting that this draft template was too detailed and would impose a significant burden on MNE groups. Comments were also submitted that the template went beyond what was required for a high level risk assessment, and could be complex and misleading for tax administrations to use. Of the columns included in the 2014 public consultation draft, the following were not included in the CbC report template in the BEPS Action 13 report:

- constituent entities organised in the country
- place of effective management
- important business activity codes
- income tax paid (on cash basis) broken down by country of organisation and other countries
- total withholding tax paid
- total employee expense
- royalties paid to constituent entities
- royalties received from constituent entities
- interest paid to constituent entities
- interest received from constituent entities
- service fees received from constituent entities
- service fees paid to constituent entities.

108. While the CbC report template in the BEPS Action 13 report contains fewer data points than that in the 2014 public consultation, the Executive Summary to the final report included a statement that the 2020 review should consider whether additional or different information should be required in an MNE group's CbC report. It is intended that any review of the information contained in a CbC report should take into account the following general considerations:

- the extent to which additional or different information would enhance a tax administration's ability to conduct a high level transfer pricing risk assessment, an assessment of other BEPS-related risks, or an economic or statistical analysis
- the fact that tax administrations currently have relatively little experience of using and analysing CbC reports
- the impact on comparability of information contained in an MNE group's CbC report for different reporting fiscal years

- the burden on MNE groups from gathering additional information, including the need to implement changes to systems for the identification and collection of information and completion of the CbC reporting template.

109. The Inclusive Framework seeks input from stakeholders on each of the following possible additional columns for Table 1:

- related party interest income
- related party royalty income
- related party service fee income
- related party interest expense
- related party royalty expense
- related party service fee expense
- total related party expenses
- research and development (R&D) expenditure
- deferred taxes.

14.1. Related party interest income, related party royalty income and related party service fee income

110. The 2014 public consultation on BEPS Action 13 included separate columns for receipts of related party interest, related party royalties and related party service fees. It was ultimately determined not to include these columns in the CbC report template, but the BEPS Action 13 report makes specific reference to these being included as part of the 2020 review.

111. Table 1 currently includes a single column for all related party revenues (excluding dividends from constituent entities). Where Table 2 indicates that an MNE group has a single main business activity in a jurisdiction (e.g. manufacturing or production; holding or managing IP; or internal group finance), then it is possible to make assumptions about the nature of related party revenues in that jurisdiction. However, where an MNE group has a number of main business activities in a jurisdiction, it is not possible from the current template to determine the nature of these payments.

112. If specific types of related party receipts are to be included separately in Table 1, these amounts could be excluded from the general related party revenues column, to avoid double counting. These receipts would still however be included in profit before tax, so the relationship between an MNE group's total revenue, profit before tax, income taxes accrued and income taxes paid in a jurisdiction remains apparent.

113. For the purposes of this current public consultation, the references to related party interest, royalty and service fees *received* in the 2014 public consultation have been changed to related party interest, royalty and service fee *income*. It is hoped that the term "income" more closely correlates with the intention that these columns should reflect the amount of income accrued for financial statements purposes, rather than the cash receipts in the fiscal year.

14.1.1. The benefits of such an approach

114. A better understanding of the location of particular types of intragroup revenue is likely to aid a tax administration in conducting a risk assessment of an MNE group. For example, it would allow tax administrations to better understand the location of mobile income in an MNE group and the extent to which this is subject to tax. It will also make clearer the amount of related party revenue that corresponds to each of an MNE group's activities in a particular jurisdiction. For relatively straightforward MNE groups, the number of jurisdictions receiving related party interest, royalties and service fees, which would be impacted by this change, may be relatively limited. On the other hand, for more complex MNE groups, with lots of entities receiving related party interest, royalties and service fees, an understanding of the amount and location of this revenue could be particularly useful for risk assessment.

115. This information would also facilitate a more comprehensive economic and statistical analysis of the information contained in CbC reports, by providing a deeper understanding as to where certain types of revenue arises more often and less often, which can then be compared with other metrics, such as average effective tax rates in these jurisdictions. Over time, changes in the location of these revenue streams may be an indicator of changes in behaviour relevant to the BEPS project.

116. It is anticipated that for the majority of MNE groups the number of jurisdictions receiving intragroup interest, royalty and service fee income will not be very large. If this is the case then this should operate to limit the compliance burden on MNE groups from providing this information. However, for MNE groups with complex internal group financing arrangements this compliance burden will be greater.

14.1.2. The challenges of such an approach

117. Information on related party interest, royalty and service fee income may already be included in local tax return information and/or the local file in the jurisdictions of constituent entities that are party to these payments, if such information is required to be provided. The addition of new columns to Table 1 could also require costly reconfiguration of taxpayer and tax administration systems at a time when jurisdictions are still at an early stage in terms of their experience of working with the existing CbC report template for the purposes of conducting a high level risk assessment.

14.2. Related party interest expense, related party royalty expense and related party service fee expense, or total related party expenses

118. The 2014 public consultation on BEPS Action 13 also included separate columns for payments of related party interest, related party royalties, and related party service fees. It was ultimately determined not to include these columns in the CbC report template, but the Inclusive Framework wanted to consult with stakeholders on whether information on specific categories of related party payments should be included in the CbC report template in the future, in light of tax administration experience. The 2014 public consultation suggested the following approaches.

- A single column for total related party payments, excluding dividends, which would correspond with the current related party revenue column.

- Separate columns for payments of related party interest, related party royalties and related party service fees, which would provide greater information on types of related party payments that have the potential to pose specific BEPS risks.
- A combination of the above, including separate columns for certain types of payments to related parties and a general column for all other types of payments to related parties, excluding dividends.

119. For the purposes of this current public consultation, the references to related party interest, royalty and service fees *paid* in the 2014 public consultation have been changed to related party interest, royalty and service fee *expense*. It is hoped that the term “expense” more closely correlates with the intention that these columns should reflect the amount of expense accrued for financial statements purposes, rather than the cash payments in the fiscal year.

14.2.1. The benefits of such an approach

120. Large MNE groups are often complex and, while a tax administration may have access to information on related party payments made by resident entities, obtaining reliable information on related party expenditure in other parts of an MNE group is much more difficult. Including information on related party expenditure within the CbC report template would allow a tax administration to more easily identify possible flows of payments through a group. High levels of related party expenses can be an indicator of certain types of BEPS risk (and correspondingly, low levels of related party payments can be an indicator that certain types of BEPS risk are not present), for example where a jurisdiction has relatively low profit before tax as a result of a high level of related party expenses.

121. Corresponding related party revenue and payments columns (either total or by category) would act as a quality control over the data in an MNE group’s CbC report for both the MNE group and for tax administrations, as any inconsistency between the total value of these columns would suggest that either revenues or payments were being over-stated or under-stated.

14.2.2. The challenges of such an approach

122. As with respect to the possible additional columns for related party interest, royalty and service fee income, related party interest, royalty and service fee expenses may already be included in local tax return information and/or the local file in the jurisdictions of constituent entities that are party to these payments, if such information is required to be provided. The addition of new columns to Table 1 could also require costly reconfiguration of taxpayer and tax administration systems at a time when jurisdictions are still at an early stage in terms of their experience of working with the existing CbC report template for the purposes of conducting a high level risk assessment.

123. It is also recognised that, while for many MNE groups the number of jurisdictions with entities receiving related party interest, royalties, and service fees may be relatively small, the number of jurisdictions with entities making these payments is likely to be much greater. This could therefore have a correspondingly greater impact on MNE groups if these columns were added to Table 1.

14.3. R&D expenditure

124. For many MNE groups, R&D is a key activity and driver of value, at the very start of the value chain. The current CbC report template allows tax administrations to see where constituent entities engaged in R&D are resident, but not the extent of these activities in each jurisdiction.

14.3.1. *The benefits of such an approach*

125. The level of R&D expenditure in a jurisdiction can be an important indicator of the level of substantial activities in that jurisdiction, as well as of the contribution constituent entities are making to value creation within an MNE group. It will also enable a clearer understanding of the relationship between jurisdictions where R&D expenditure is incurred and those where IP is managed or held.

126. The number of jurisdictions with entities incurring R&D expenditure will vary, depending on the sector an MNE group operates in and the structure it has adopted. Some MNE groups may already gather and hold information of the level of R&D expenditure in certain jurisdictions for local tax reporting purposes (e.g. where this information is required for the purposes of complying with patent box rules or for claiming other tax reliefs).

14.3.2. *The challenges of such an approach*

127. The presence of R&D activity in a jurisdiction does not necessarily mean that beneficial ownership in any intangibles created by that activity is attributable to that jurisdiction. There is a risk therefore that including this information in Table 1 could lead to an MNE group appearing to be high risk in circumstances when it is not (i.e. “false positives”).

128. The Inclusive Framework on BEPS has agreed on a standard for mandatory spontaneous exchange of information by no or only nominal tax jurisdictions on entities with respect to which the substantial activities requirement applies. The exchanges take place from 2021 and would include information on operating expenditure incurred by entities in such jurisdictions which earn IP income (which could include R&D expenditure). Including a column for R&D expenditures in the CbC report template may therefore be duplicative of this standard in the case of no or only nominal tax jurisdictions.

14.4. Deferred taxes

129. An important function of an MNE group’s CbC report is to provide tax administrations with information on the level of income taxes accrued and paid in different jurisdictions, which can be used for the purposes of conducting a high level risk assessment. The BEPS Action 13 report includes specific instructions that income tax accrued (current year) in Table 1 of the CbC report template “should not include deferred taxes or provisions for uncertain tax liabilities”. This is helpful in that it focuses on the current tax of an MNE group’s constituent entities in a jurisdiction for the fiscal year. However, in calculating an effective tax rate for an MNE group’s constituent entities in a particular jurisdiction, this can create a mismatch between the calculation of profit before tax (which is calculated under accounting principles) and income tax accrued (which is essentially based on taxable profits calculated under tax rules in the relevant jurisdiction).

130. Where there are permanent differences between the calculation of profit under accounting and tax rules (e.g. where a category of income is tax exempt in a jurisdiction), then this does not pose a concern, as the resulting low effective tax rate would be relevant for the purposes of a high level risk assessment or statistical analysis. However, it may be unhelpful if temporary differences between the calculation of profit under tax and accounting rules (e.g. due to tax losses carried forward) mean an MNE group appears to have a high or low effective tax rate in a jurisdiction when in fact this is a timing issue.

131. For financial reporting purposes, this temporary issue is addressed by using deferred tax to align the timing of the reporting of the taxation of profit with the timing of the reporting of the profit itself. It may therefore be helpful to replicate this approach in an MNE group's CbC report, by including movements in deferred tax as an additional column alongside income tax accrued (current year). If an additional column is not added, the definition of income tax accrued (current year) could be amended so as also to include movements in deferred tax.

132. It is not proposed to consider including provisions for uncertain tax liabilities in the CbC report template. These provisions concern an MNE group's assessment of the likelihood that a particular position will be agreed by the relevant tax administration and are not currently seen as particularly useful for the purposes of a high level risk assessment or statistical analysis.

14.4.1. The benefits of such an approach

133. Including deferred tax in the CbC report template would allow a tax administration to ignore any temporary differences that are giving rise to a relatively high or low effective tax rate in a particular jurisdiction for a particular period. The tax administration could then focus its attention on understanding whether MNE group's with constituent entities that still have a low effective tax rate risk assessment after compensating for these differences pose a BEPS risk to its jurisdiction.

14.4.2. The challenges of such an approach

134. MNE groups will typically be required to recognise movements in deferred tax assets and liabilities on an annual basis for financial reporting purposes, and report the net effect of these in their consolidated and separate entity financial statements. Therefore, no particular challenges are anticipated from requiring the separate reporting of movements in deferred tax in a separate column in Table 1, beyond the need for MNE groups to implement systems to capture and record such information for inclusion in the CbC report.

135. While amending the definition of accrued income tax (current year) to include movements in deferred tax would avoid the need to add a column to Table 1, it would make it impossible for a tax administration to understand the extent to which an accrued income tax expense was composed of current tax versus deferred tax. While this may not be necessary for the purposes of calculating an MNE group's effective tax rate in a jurisdiction using CbC reporting data, there may be other elements of a tax administration's risk assessment processes which rely on an understanding of an MNE group's current tax in a jurisdiction for a given fiscal year, for example where this figure is being used alongside information from other sources that may not be prepared using financial reporting principles.

14.5. The changes that would be needed to the BEPS Action 13 package

136. Annex III to the BEPS Action 13 report, which contains the CbC report template and accompanying instructions would be amended to reflect any new columns added.

Questions for public consultation

31. For each of the possible new items of information considered in this section, are there any benefits from including an additional column in Table 1 of the CbC report template, in addition to those in this document?
32. For each of the possible new items of information considered in this section, are there any practical challenges or other concerns to MNE groups from including an additional column in Table 1 of the CbC report template, in addition to those in this document?
33. If any of the possible new items considered in this section were added to Table 1 of the CbC report template, what additional instructions or guidance would be helpful to MNE groups?

15. Should changes be made to how constituent entities that are not resident in any tax jurisdiction for tax purposes are categorised for CbC reporting purposes and how information on these entities is reported in Table 1?

137. Paragraph 24 of the BEPS Action 13 report states that an MNE group's CbC report should include tax jurisdiction-wide information relating to the global allocation of the income, taxes paid and economic activity in tax jurisdictions in which the MNE group operates. The specific instructions on page 33 of the BEPS Action 13 report state that a separate line should be included in Table 1 for all constituent entities that are not resident in any tax jurisdiction for tax purposes. In the BEPS Action 13 CbC XML schema, the residence jurisdiction of these entities is recorded as ISO code X5 ("Stateless").

138. This approach to the treatment of entities that are not tax resident anywhere poses three important issues in using CbC reporting information for the purposes of a high level risk assessment or economic and statistical analysis.

- There are different reasons for an entity not being tax resident anywhere. Some of which may depend on the legal form of the entity (e.g. where a general partnership is transparent for tax purposes), whereas other depend upon factors such as where the entity is established and the location of its effective management and control (e.g. where a corporate entity does not meet the conditions for being tax resident anywhere). These different categories of entity may pose a different level of potential BEPS risk, but are currently treated the same way and aggregated in Table 1.
- Where an entity is transparent for tax purposes, its information will be included in Table 1 in the row for entities that are not tax resident anywhere. However, the same information (or part of that information) may also be included in the row for the tax residence jurisdiction(s) of constituent entities that are shareholders or partners in the transparent entity. This can result in double counting of certain information in Table 1, but the extent of this cannot be determined from the CbC report.
- Information on all constituent entities that are not tax resident anywhere is aggregated in a single line in Table 1. Where these entities operate in the same jurisdiction, the rationale for this aggregation may be consistent with that for requiring the reporting of aggregated information on constituent entities tax resident in a jurisdiction. However, where the constituent entities that are not resident anywhere are located and operate in different jurisdictions, this rationale may not apply.

139. This public consultation document includes four possible approaches to address these issues.

15.1. Approach 1

140. Constituent entities that are not tax resident anywhere can be broken down into three broad categories:

-
- A. entities that are tax transparent in the jurisdiction in which they would otherwise be tax resident, which are held directly or indirectly by constituent entities resident in the same jurisdiction;
 - B. entities that are tax transparent in the jurisdiction in which they would otherwise be tax resident, which are held directly or indirectly by constituent entities resident in a different jurisdiction; and
 - C. entities that are not transparent for tax purposes, but do not meet the requirements to be considered tax resident in any jurisdiction.

141. These three categories of entities are currently grouped together and aggregated in an MNE group's CbC report. However, the manner in which they have the potential to pose a particular BEPS-related risk differs.

- Where an entity is tax transparent in the jurisdiction in which it would otherwise be resident, and is held directly or indirectly by constituent entities resident in the same jurisdiction (i.e. Category A), whether the entity's profits are subject to tax will depend upon tax rules applicable to these constituent entities in the relevant jurisdiction.
- Where an entity is tax transparent in the jurisdiction in which it would otherwise be resident, and is held directly or indirectly by constituent entities resident in a different jurisdiction (i.e. Category B), whether the entity's profits are subject to tax will depend upon whether the entity is viewed as tax transparent in the jurisdiction of these constituent entities, and whether hybrid entity rules recommended under BEPS Action 2 apply.
- Where an entity is not transparent for tax purposes, but does not meet the requirements to be considered tax resident in any jurisdiction (i.e. Category C above) then, unless the entity undertakes activity through a permanent establishment, or measures such as controlled foreign company rules apply, there is a risk that its profits may not be taxed anywhere.

142. Based on submissions from stakeholders, it appears that a large number of MNE groups have filed CbC reports including constituent entities that fall within Category A. The Inclusive Framework invites comments on whether constituent entities in Category A should be identified in Table 2 of an MNE group's CbC report (e.g. through use of a different two digit ISO code) and information on these constituent entities reported separately from that on other entities that are not tax resident anywhere in Table 1. Under this approach information on constituent entities in Categories B and C would continue to be reported together.

15.1.1. The benefits of such an approach

143. In broad terms, where a constituent entity makes a payment to a foreign related party that falls into Categories B or C, and the entity has a low effective tax rate, the tax administration in the jurisdiction where the constituent entity is resident is likely to require additional information to gain comfort that the payment is subject to tax somewhere. This is because whether the entity's profits are subject to tax is likely to depend upon the interaction of the tax laws of more than one jurisdiction.

144. In contrast, where a transparent entity in Category A is established and effectively managed and controlled in the jurisdiction where its direct or indirect owners are resident,

whether its profits are subject to tax depends primarily upon the tax law in that jurisdiction. It is also more likely that a particular jurisdiction's tax rules will be designed to ensure that shareholders or partners in a transparent entity are subject to tax on their share of that entity's profits.

145. Providing information on these entities separate from other entities that are not resident anywhere could allow tax administrations in other jurisdictions where an MNE group has constituent entities to better assess the likelihood of a BEPS-related risk posed by an entity that is not tax resident anywhere, based on information in the CbC report itself.

146. This information will also help tax administrations in using CbC reporting information for economic and statistical analysis. Making it possible for the tax administration to make adjustments to compensate for the current double counting of certain information, under Stateless, and also under the jurisdiction of the constituent entities that are shareholders or partners in the entity would aid tax administrations in interpreting this data.

147. It is not expected that identifying transparent entities that are held by constituent entities in the same jurisdiction would be onerous for an MNE group. This information is likely to already be needed in order to determine the taxable profits of the shareholders or partners in the transparent entity, and so identifying these entities for the purposes of preparing a CbC report would seem straight forward.

15.1.2. The challenges of such an approach

148. This would require an MNE group to obtain information on the basis of a constituent entity not being resident anywhere and, for entities that are transparent for tax purposes, the residence jurisdiction of constituent entities that are shareholders or partners in that entity. This information would not be included in the MNE group's CbC report, but would be used to determine how to categorise each constituent entity. However, as mentioned above, it is expected that basic information on a constituent entity's ownership and tax status should be readily available to most MNE groups.

15.1.3. The changes that would be needed to the BEPS Action 13 package

149. The specific instructions on page 33 of the BEPS Action 13 report concerning the treatment of constituent entities that are not resident anywhere for tax purposes would be amended. The OECD CbC report XML schema would also be amended (e.g. to introduce a new 2 digit ISO jurisdiction code to indicate a transparent entity in the same jurisdiction as its shareholders or partners).

15.2. Approach 2

150. The Inclusive Framework also invites comments on whether constituent entities in each of Categories A, B and C (as described in Approach 1) should be identified in an MNE group's CbC report in Table 2, and information on each of these categories reported separately in Table 1.

15.2.1. The benefits of such an approach

151. This would share the benefits of Approach 1 outlined above. It would also provide some additional information on the nature of other constituent entities that are not resident

anywhere. In light of the fact that these categories of constituent entity have the potential to pose different types of BEPS risk, this could be beneficial to tax administrations in conducting a high level tax risk assessment. For example, if a tax administration is aware that a tax transparent constituent entity is held by constituent entities in a different jurisdiction, it may be possible to determine that the tax transparent entity's profits are subject to tax in that jurisdiction.

152. This information could also provide further help to tax administrations in using CbC reporting information for economic and statistical analysis. Understanding which constituent entities are transparent for tax purposes would allow a tax administration to make some adjustment for double counting of certain information (on the assumption that this information is also included in the jurisdiction of the partners or shareholders in the constituent entity) even if for constituent entities in Category B the other tax jurisdiction in which the information is included is not known.

153. As with Approach 1, it is not expected that categorising entities that are not resident anywhere in this way would be onerous for an MNE group. This information is likely to already be needed in order to determine the correct tax treatment of constituent entities, and so identifying these entities for the purposes of preparing a CbC report would seem straight forward.

15.2.2. The challenges of such an approach

154. While this approach will provide additional information on the nature of constituent entities that are not resident anywhere, it may still not provide enough information to determine the extent to which these entities pose a BEPS risk. For example, while the profits of constituent entities that are not resident anywhere may be subject to tax in the hands of other constituent entities (e.g. on the foreign partners in a tax transparent partnership or under Controlled Foreign Company rules (CFC rules)), whether or not these profits are subject to tax somewhere in the group cannot be determined from the information contained in the MNE group's CbC report.

15.2.3. The changes that would be needed to the BEPS Action 13 package

155. The specific instructions on page 33 of the BEPS Action 13 report concerning the treatment of constituent entities that are not resident anywhere for tax purposes would be amended. The OECD CbC report XML schema would also be amended (e.g. to introduce new 2 digit ISO jurisdiction codes for the different categories).

15.3. Approach 3

156. Where a constituent entity is not tax resident anywhere, and does not operate through a permanent establishment that is subject to tax, then the constituent entity will typically not be subject to income tax on its profits (subject to any withholding tax incurred on amounts received). However, these profits may be subject to tax on another constituent entity, either under general principles of taxation (e.g. where the entity not tax resident anywhere is tax transparent and its profits are also included in the taxable profits of its shareholders or partners) or under specific tax rules (e.g. where the entity not tax resident anywhere is not tax transparent, but its profits are attributed to another constituent entity under, for example, controlled foreign company (CFC) rules).

157. As an alternative to Approach 1 and Approach 2, the Inclusive Framework invites comments on a requirement for MNE groups to report constituent entities that are not tax resident anywhere in four separate categories.

- D. Tax transparent entities whose entire profit is taxed on a current basis in the hands of direct or indirect equity holders that are constituent entities and are tax resident in the jurisdiction of the MNE group's UPE. An indirect equity holder includes a constituent entity that holds a tax transparent entity through one or more tax transparent entities. This would include a general partnership owned by constituent entities resident in the same jurisdiction as the MNE group's UPE, provided such partners are subject to tax on the general partnership's profit.
- E. Tax transparent entities whose entire profit is taxed on a current basis in the hands of direct or indirect equity holders that are constituent entities and are tax resident in a jurisdiction other than that of the MNE group's UPE (or a combination of constituent entities that are tax resident in the same jurisdiction as the MNE group's UPE and other jurisdictions). This would include a general partnership owned by constituent entities resident in a jurisdiction other than that of the MNE group's UPE, provided such partners are subject to tax on the general partnership's profit.
- F. Entities that are not tax transparent but do not meet the criteria to be tax resident in any jurisdiction, and all of whose profit is taxed on a current basis in the hands of direct or indirect equity holders that are constituent entities. This would include an entity whose profits are subject to tax on one or more direct or indirect equity holders under CFC rules.
- G. All other entities that are not tax resident anywhere.

15.3.1. The benefits of such an approach

158. In addition to those that may be achieved by Approach 1 and Approach 2, this would have a number of further benefits.

- It would provide a greater level of detail on the basis for different types of constituent entities not being tax resident anywhere.
- It may support tax administrations in understanding the extent to which certain information is double counted in Table 1 (e.g. if it is clear that the Profit (Loss) Before Tax of a tax transparent entity is also included in the Profit (Loss) Before Tax of the tax residence jurisdiction of another constituent entity or constituent entities).
- It could provide tax administrations with a better picture of where actual low-taxed profits are in an MNE group, whether profits have in fact been subject to tax in another jurisdiction (e.g. under CFC rules), and, in some cases, where this tax was paid (e.g. for Category D, where tax was paid in the jurisdiction of the MNE group's UPE).

15.3.2. The challenges of such an approach

159. Under Approach 1, an MNE group would be required to identify constituent entities that are tax transparent and located in the same jurisdiction as their owners (Category A), and Approach 2 extends this to those located in a different jurisdiction to

their owners (Category B), but in each case no judgement would be required as to whether the profits of the constituent entity are subject to tax. This is consistent with the general approach required in completing Table 1, where information is provided on the Profit (Loss) Before Tax and Income Tax Accrued taken from the sources of data that may be used, but an MNE group does not need to consider how a particular item is treated for tax purposes. Approach 3, on the other hand, would require some examination of the tax treatment of the profits of constituent entities that are not tax resident anywhere, including in the jurisdictions of other constituent entities. However, this is only relevant when determining how to categorise a particular entity under Approach 3 and does not affect the information actually provided in Table 1. In any case, it is expected that an MNE group will already know whether the profits of constituent entities that are not tax resident anywhere are subject to tax on other constituent entities.

15.3.3. The changes that would be needed to the BEPS Action 13 package

160. The specific instructions on page 33 of the BEPS Action 13 report concerning the treatment of constituent entities that are not resident anywhere for tax purposes would be amended. The OECD CbC report XML schema would also be amended (e.g. to introduce new 2 digit ISO jurisdiction codes for the different categories of entity described above).

15.4. Approach 4

161. In light of the particular tax risks that may be posed by entities that are not tax resident anywhere, the Inclusive Framework also invites comments from stakeholders on changes to require Table 1 to include a separate line for each entity, rather than one line for all such entities.

162. Depending upon the outcomes of the public consultation on Approach 1, Approach 2 and Approach 3 above, whether information should be aggregated or reported by entity will be considered separately for each category of entity. It is not necessary that all categories of constituent entity that are not tax resident on any tax jurisdiction are treated in the same way.

15.4.1. The benefits of such an approach

163. The reporting of financial data by tax-jurisdiction in an MNE group's CbC report allows a tax administration to understand the global allocation of income, taxes and economic activity among tax jurisdictions where the MNE group operates. However, where an MNE group includes entities that are not tax resident in any jurisdiction, and which may be incorporated or established in different jurisdictions, there does not seem to be any logic or benefit in this information being reported on an aggregated basis.

164. In contrast, if MNE groups were required to report information on each entity that is not tax resident anywhere separately in Table 1, this would provide tax administrations with better data for the purposes of conducting a risk assessment, as the relationship between each entity's financial and numerical data in Table 1 and its jurisdiction of establishment and activities in Table 2 will be clear. In addition, there are currently cases where the revenue and profit before tax of an entity that is not tax resident anywhere are also included in the results of another constituent entity, which is subject to tax on this profit. This may be more easily explained and understood where the results for each entity that is not resident anywhere are reported separately in Table 1. At the same time, it would

not seem that this would impose a particular burden on MNE groups which, as these entities may be established and operate in different jurisdictions, presumably hold distinct financial data on each such entity.

15.4.2. The challenges of such an approach

165. Where an MNE group includes constituent entities that are not resident in any tax jurisdiction for tax purposes and these entities have operations in the same jurisdiction, then the general challenges of requiring Table 1 information to be provided by entity (set out in section 12.2 of this Consultation Document) would also apply here. Otherwise there do not seem to be any challenges from this approach, other than for MNE groups to change their current systems for preparing a CbC report.

15.4.3. The changes that would be needed to the BEPS Action 13 package

166. The specific instructions on page 33 of the BEPS Action 13 report would be amended, so that “[a] separate line should be included for each constituent entity in the MNE group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes.”

Questions for public consultation

34. For each of the possible approaches considered in this section, are there any benefits in addition to those in this document?
35. For each of the possible approaches considered in this section, are there any practical challenges or other concerns to MNE groups in addition to those in this document?

16. Should fields required in the XML schema (e.g. tax identification number) that are not in the CbCR template in the Action 13 report be incorporated into the template?

167. The model CbC report template in the BEPS Action 13 report sets out the information that must be provided by an MNE group in its CbC report, which is also listed in the model legislation in the CbC Reporting Implementation Package. However, the minimum standard is not prescriptive as to how a CbC report should be filed and jurisdictions have adopted different approaches.

168. While jurisdictions are able to allow the filing of CbC reports in different forms, CbC reports must be exchanged using the CbCR XML schema. This requires information on the address and tax identification numbers (TINs) of constituent entities to be included, which are not part of the CbC report template. The Inclusive Framework seeks comments from stakeholders on amendments to the template contained in the CbC Reporting Implementation Package to ensure it contains all of the information required to be included in the XML schema when a CbC report is exchanged.

16.1. The benefits of such an approach

169. A number of jurisdictions have introduced CbC reporting filing obligations which require an MNE group to prepare and file a CbC report containing the information described in the model legislation, in the format of the model CbC report template. Although this is wholly consistent with the minimum standard, it has caused a problem for the jurisdiction's tax administration, which must then obtain information on the addresses and TINs of constituent entities in order to prepare the XML schema for exchange. Adding this information to the model CbC report template should ensure that it is included in a CbC report when filed by the MNE group. This should not increase the burden on MNE groups, which in any case will be required to provide this information, and may in fact reduce this burden if it means an MNE group can submit all required information at the same time rather than needing to respond to additional requests.

16.2. The challenges of such an approach

170. Adding additional information to the model CbC report template could mean that this information may also be required from Reporting MNEs when filing a CbC report under local filing rules. This may also be burdensome in some cases when the CbC report is to be filed by an entity that does not have access to address and tax identification numbers of other constituent entities in its group, when there is no need for the tax administration receiving a CbC report under local filing rules to exchange the CbC report.

171. If necessary, a jurisdiction could address this issue by stating that the additional information is not required where a CbC report is required to be filed by a constituent entity that is not the UPE of an MNE group, and is not filing a CbC report as a surrogate parent entity. However, it is anticipated that instances of local filing should arise less often as more jurisdictions implement a CbC reporting filing obligation and establish a network of qualifying competent authority agreements for the exchange of CbC reports.

16.3. The changes that would be needed to the BEPS Action 13 package

172. This would require an amendment to the model CbC report template and to Article 4 of the model legislation in the CbC Reporting Implementation package.

Questions for public consultation

36. Are there any benefits from including additional information required in the CbCR XML schema in the CbC report template, in addition to those in this document?
37. Are there any practical challenges or other concerns to MNE groups from including additional information required in the CbCR XML schema in the CbC report template, in addition to those in this document?

17. Should standardised industry codes be included in Table 2?

174. Table 2 of the CbC report template requires an MNE group to provide information on the main business activities undertaken by each constituent entity of the group. The Inclusive Framework invites comments from stakeholders on whether Table 2 could also require the reporting of standardised industry codes for each constituent entity and, if so, which industry code standard would be the most appropriate.

17.1. The benefits of such an approach

175. An important element of a transfer pricing risk assessment is a comparison of the activities and results of a particular entity with suitable comparables based on the sector and activities of that entity. Incorporating standardised industry codes into Table 2 would facilitate a comparison of the results of an MNE group in a particular jurisdiction with those of other specific entities or MNE groups operating in the same sector, or with average results for all entities operating in the sector. Incorporating standardised industry codes into Table 2 could be beneficial not only for tax risk analysis but also in the context of work on the statistical and economic analysis of aggregated and anonymised CbC reports.

17.2. The challenges of such an approach

176. There are currently numerous industry code standards used by MNE groups and analysts, including the Standard Industrial Classification (SIC), the North American Industry Classification System (NAICS), the Nomenclature Statistique des Activités Économiques dans la Communauté Européenne (NACE), and the International Standards Industrial Classification (ISIC). However, as a CbC report needs to be suitable for use by tax administrations in all jurisdictions where an MNE group has constituent entities, it would be necessary to agree a single industry code standard to be used by all MNE groups in preparing Table 2. This would require MNE groups not currently using the standard adopted for CbC reporting purposes to assign codes to each constituent entity based on this standard.

177. Whichever industry code standard is agreed upon, MNE groups may face challenges in assigning a code to certain constituent entities, for example where the constituent entity is engaged in multiple activities. In these cases, an MNE group could be required to provide the code for the constituent entity's principle main activity (e.g. based on revenues) while a tax administration would need to take into account all of a constituent entity's main business activities in addition to its industry code to ensure an effective risk assessment.

17.3. The changes that would be needed to the BEPS Action 13 package

178. This would require amendments to the model CbC report template and the addition of instructions on how the template should be completed, within the BEPS Action 13 report.

Questions for public consultation

38. Are there any benefits from including standardised industry codes in the CbC report template, in addition to those in this document?
39. Are there any practical challenges or other concerns to MNE groups from including standardised industry codes in the CbC report template, in addition to those in this document?
40. From the perspective of MNE groups which of the existing industry code standards is most likely to be the least burdensome and most useful in providing information on the activities of constituent entities?

18. Should pre-determined fields be added to Table 3, in addition to free text?

179. Table 3 of the CbC report template provides an opportunity for an MNE group to provide additional information that it believes would be helpful to tax administrations in conducting a high level risk assessment. The BEPS Action 13 report included only limited cases where an MNE group must include information in Table 3. For example, an MNE group should include in Table 3 a brief description of the sources of data used, an explanation of the reason for any change in the sources of data and its consequence, and the nature of the activities of a constituent entity whose main business activity is listed as “other” in Table 2. Subsequent interpretative guidance agreed by the Inclusive Framework has also included details of specific information that an MNE group should be encouraged or required to include in Table 3 where relevant. However, in general, the experience of tax administrations is that MNE groups have made little use of Table 3 in practice.

180. The Inclusive Framework invites comments from stakeholders on the introduction of predetermined fields in Table 3 to provide additional information or clarification concerning the preparation and content of an MNE group’s CbC report, as well as information on any changes to an MNE group that would assist in the understanding of its CbC report. The intention is that these fields will provide context for a user of an MNE group’s CbC report, and should not require an MNE group to gather additional information that it would not already have available. As such, completion of fields could be mandatory without imposing a significant burden on MNE groups. This does not prevent MNE groups also including free text information in Table 3 when required or appropriate.

181. The specific fields that could be included in Table 3, and their design, will be determined in the future, once consideration of other issues in the 2020 review is complete. It will also be determined which field would be mandatory or optional. Examples of fields that could be included in Table 3 are set out on the following pages.

Possible fields for inclusion in Table 3

1	Applicable accounting standards used for determining constituent entities	<input type="checkbox"/> IFRS	<input type="checkbox"/> GAAP in jurisdiction of residence of UPE	<input type="checkbox"/> Other (provide additional information as free text)
2	Source of data	<input type="checkbox"/> Consolidation reporting pack (specify jurisdictions):	<input type="checkbox"/> Entity statutory financial statements (specify jurisdictions)	<input type="checkbox"/> Internal management accounts (specify jurisdictions)
3	A material acquisition, disposal or restructuring of constituent entities has occurred during the reporting fiscal year	<input type="checkbox"/> Yes (provide additional information as free text)	<input type="checkbox"/> No	
4	Table 1 includes information on constituent entities included in consolidated financial statements using proportionate consolidation rules (see Guidance III.5)	<input type="checkbox"/> Yes (provide additional information as free text)	<input type="checkbox"/> No	

5	Where proportionate consolidation rules have been applied, the number of employees of the relevant constituent entity are reported on a pro-rata basis (see Guidance III.4)	<input type="checkbox"/> Yes, a pro-rata basis is used (provide additional information as free text)	<input type="checkbox"/> No, the full number of employees is reported (or not applicable)
6	Income tax refunds have been included in revenues rather than income tax paid (cash basis), as permitted under the applicable accounting standards (see Guidance II.4)	<input type="checkbox"/> Yes (provide additional information as free text)	<input type="checkbox"/> No
7	Accumulated earnings includes negative accumulated earnings (i.e. accumulated losses) for some constituent entities (see Guidance II.6)	<input type="checkbox"/> Yes (provide additional information as free text)	<input type="checkbox"/> No
8	Does Table 1 contain information prepared on a consolidated tax jurisdiction-wide basis? (see Guidance II.3)	<input type="checkbox"/> Yes, consolidated information is provided in Table 1	<input type="checkbox"/> No, aggregate data is provided in Table 1
9	Was the UPE a constituent entity in another MNE group in the preceding fiscal year?	<input type="checkbox"/> Yes (provide the name of the other MNE group as free text)	<input type="checkbox"/> No
10	Is the UPE exempt from income tax in its tax jurisdiction of residence?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

11 Is the UPE a not for profit entity?

Yes

No

18.1. The benefits of such an approach

182. The introduction of predetermined fields in Table 3 would enable MNE groups to provide useful information easily and quickly. This would reduce the need for an MNE group to prepare a comprehensive text (although additional detail may be provided), while the standardised text used would improve consistency in the preparation and interpretation of CbC reports. The content of these fields could also be incorporated into a tax administration's automated risk assessment tools, improving the effectiveness of a risk assessment.

18.2. The challenges of such an approach

183. Predetermined fields in Table 3 would be used to provide supplementary information and context for an MNE group's CbC report, but would not require an MNE group to gather additional information it already holds. That said, this still imposes some burden on MNE groups that should be balanced against the benefits to MNE groups and tax administrations from the use of a relatively easy format for the provision of this information.

18.3. The changes that would be needed to the BEPS Action 13 package

184. This would require amendments to the model CbC report template and the addition of instructions on how the template should be completed, within the BEPS Action 13 report.

Questions for public consultation

41. Are there any benefits from including predetermined fields in Table 3 of the CbC report template, in addition to those in this document?
42. Are there any practical challenges or other concerns to MNE groups from including predetermined fields in Table 3 of the CbC report template, in addition to those in this document?
43. From the perspective of MNE groups, what predetermined fields could be included in Table 3 that would provide useful information to a tax administration in interpreting a CbC report, while not being burdensome for an MNE group?