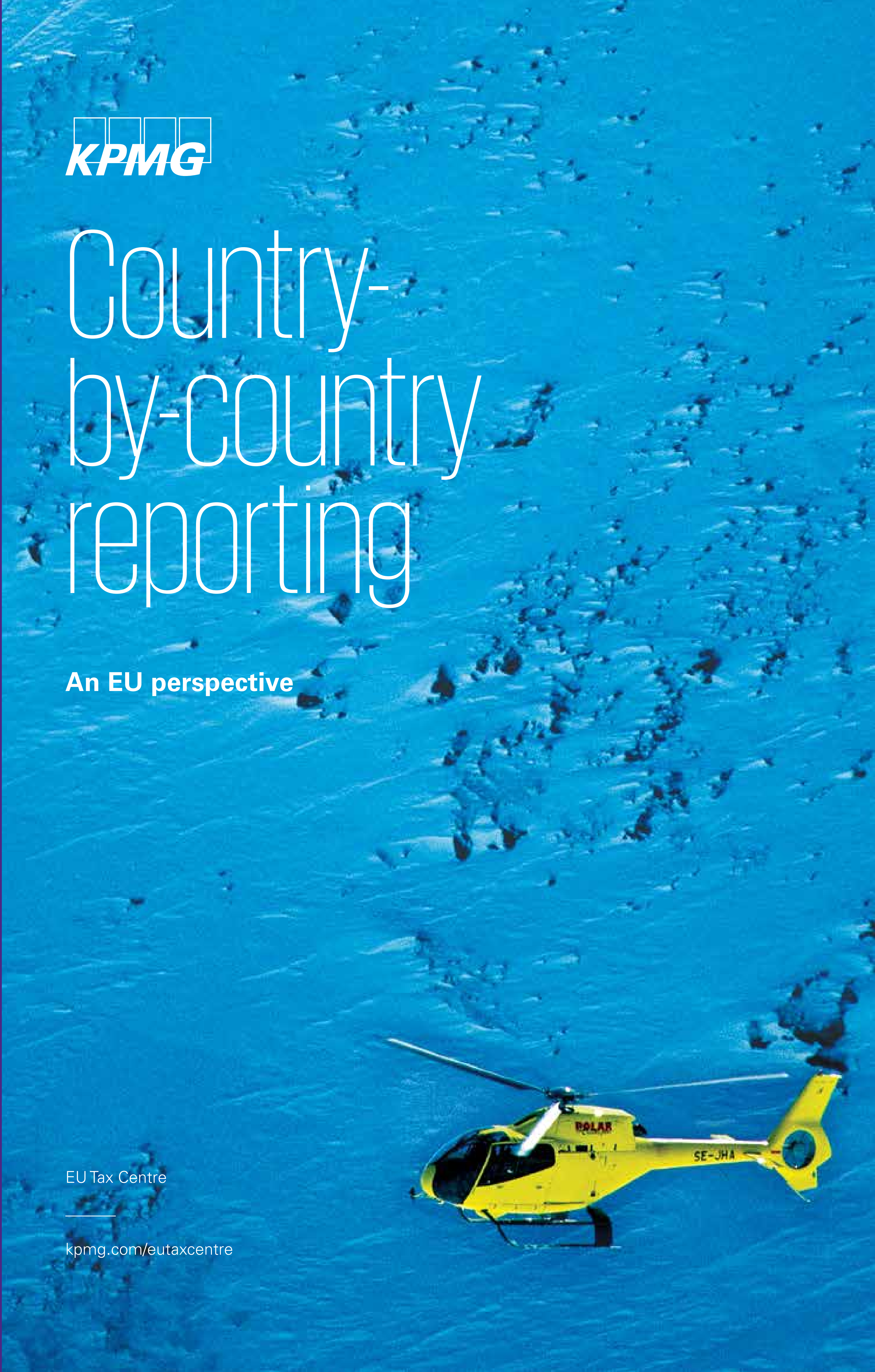

Country-by-country reporting

An EU perspective

EU Tax Centre

kpmg.com/eutaxcentre

Introduction

Tax transparency is here to stay. A combination of public pressure and political willpower at both the G20/OECD and European Union (EU) levels has resulted in a paradigm shift in the global tax landscape. While many of the details are still being worked out and new initiatives are still appearing on the horizon, taxpayers are beginning to adjust, or at least recognize the need to adjust their tax business models and policies.

Companies that are on top of the changes before they occur will be best placed to ride out the waves of new rules and procedures. For those companies this new tax world represents not only obstacles to overcome but also opportunities to grasp. For example, competitive edge, compliance burdens and public image can either be enhanced or suffer, depending on the choices made.

So what should affected businesses now be doing?

Of course tax data management is a top priority. Being prepared in terms of systems, data and the reporting process itself is essential. Take a look at some of our detailed suggestions in our '2x4 Approach to Country-by-Country Reporting'[1].

But there are some important strategic aspects too.

Number one is: Know what is going on. Staying on top of developments means not being taken by surprise by events and not being forced into a reactive role focused on damage limitation.

Number two is: Review and, if necessary, adjust tax strategies and policies. These should not be limited to complying with the rules, but should, for example, leverage opportunities for more transparent corporate communication with stakeholders or for forming enhanced relationships with tax administrations.

The third action point on the agenda should be to identify corporate structures or practices that are not consistent with the new tax world and design and implement appropriate responses. This can generate collateral benefits where the opportunity is taken to align tax structures with, for example, core business strategies, corporate social responsibility plans, etc.

The final strategic action point should be: Anticipate the unexpected and manage the associated risk. The international tax landscape is in a state of flux and is, in many respects, unpredictable. Corporate strategies need to be flexible enough to respond to this. This means being able to adapt and adjust with a minimum of internal and external friction. Businesses should anticipate, for example, that increased transparency carries the risk of miscommunication and misinterpretation. They should also anticipate the likelihood that increased transparency will lead to more double taxation and more occasions for disputes to arise.

This report, which provides step-by-step comparative guidance to the EU country-by-country reporting (CBCR) initiatives, does not pretend to be a complete answer to all or even any of the above, but may provide some useful insights to better enable businesses to respond to the changes that are being made to the international tax playing field. KPMG member firms have strong credentials when it comes to helping clients manage their country-by-country reporting.

If you haven't done so already, do contact one of our core experts listed at the end of this paper to find out how a KPMG team can help you.

To stay updated on CBCR in the EU, visit our website at kpmg.com/eutaxcentre.

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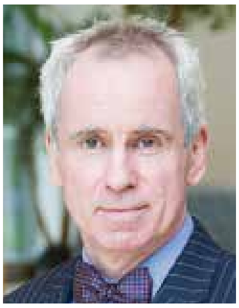

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[1] http://www.kpmg-institutes.com/institutes/taxwatch/articles/2016/04/2-x-4-approach-cbyc-reporting.html

Contents

Context and background

CBCR — Why now?

Transparency has been at the heart of the global debate on cross-border business taxation in recent times. The launch of the OECD/G20's anti-Base Erosion and Profit Shifting (BEPS) project in 2013 marked a revolutionary turning point in the ground rules on international tax. Widely regarded as (too) ambitious, the proposals have been catalyzed by developments such as 'Lux leaks', high-profile EU state aid legal claims brought against certain household brand names, and the 'Panama Papers'. The debate has been further fueled by civil society organizations and the media. Rather than waiting in line for the outcome of the OECD/G20 initiatives, the EU has been pursuing a parallel course on many of the same issues. One of these is the country-by-country reporting (CBCR) of tax information.

What are the goals?

The objectives behind CBCR have varied over time and according to the particular context. Early initiatives were largely industry focused, were in principle voluntary, and involved disclosure to the public. A key forerunner was the Extractive Industries Transparency Initiative (EITI) that provided for transparency over payments made by participating oil, gas and mining companies to governments and government-linked entities, as well as transparency over revenues by those host country governments. The focus was thus on improving transparency and accountability as to how natural resource wealth is generated and used. These voluntary codes have been followed up by various mandatory regimes, such as the EU's rules for large extractive and logging industry enterprises (in the Accounting Directive, 2013/34/EU and Transparency Directive, 2004/109/EC) and a similar initiative in the US known as the 'Dodd-Frank Act'.

The voluntary initiatives have also sparked similar public disclosures in other industries, notably in the financial sector, this time arguably more geared to strengthening the public relations of the companies concerned than with how the revenue was used by governments. In the US, various mandatory rules have been introduced that mainly affect issuers of securities on capital markets, and that provide for disclosure on a more or less geographical basis of taxes and revenues. Such disclosure clearly mainly serves the purpose of enhancing investor protection. Similar public disclosure rules have been introduced in the EU for the financial sector with a similar purpose (in the CRD IV Directive, 2013/36/EU), but with an overriding goal of regaining the trust of EU citizens in the financial sector.

Unlike these earlier initiatives, the new wave of CBCR initiatives at OECD and EU level has a dual aim: one is to influence corporate tax behavior by discouraging aggressive tax planning and the other is to discourage jurisdictions from maintaining tax regimes that are considered harmful from a political/economic perspective. The ultimate aim may be summed up in the OECD/EU 'mantra' that tax should be paid in the country where the profits are generated.

The EU context

EU legislation — such as EU directives — on direct taxation is a politically sensitive issue and taxation is still very much protected by national sovereignty. Nevertheless, domestic tax rules are by no means immune to the influence of EU law. While attempts to harmonize EU tax laws have largely failed in the past, there have been increasing examples of coordinated tax rules (such as the Parent-Subsidiary Directive). Having said that, a reflection of the political sensitivity is the fact that legislation on tax matters requires the unanimous agreement of the 28 Member States. There has also been a long history of cooperation on the administration of taxes between EU tax authorities. The latter has been intensified in recent times by, for example, the extension of the automatic exchange of information to information on financial accounts (reflecting the OECD's Common Reporting Standard) and even more recently, to cross-border advance tax rulings. Extending this still further to CBCR, given the EU's current focus on aggressive tax planning and transparency, may not be considered out of place.

Apart from the national sovereignty issue, the EU's power to legislate on this kind of issue is not unfettered. For example, an important condition is that the legislation complies with the principle of subsidiarity, i.e., that the objectives can only be achieved by action at EU level, rather than leaving the matters to be regulated (or not) at individual Member State level. The key advantage of EU-wide rules is that, at least to an extent, they provide for a consistent implementation. While individual tax authorities may still reach different interpretations on the same rules, the negative consequences of this are mitigated by having disputes resolved by the Court of Justice of the EU.

Another advantage of the EU adopting its own rules rather than, for example, simply following OECD recommendations, is that the EU remains in the legislative driving seat and can, for example, adapt rules to reflect the special features of the EU's internal market. Having said that, the room for maneuver may be limited by other factors such as the concern not to step out of line or pre-empt global developments with the consequent risks to the international competitiveness of EU businesses or EU Member States. The latter has been particularly emphasized in the public debates, including the EU's public consultation, on CBCR.

Public vs. non-public CBCR

In proposing public CBCR, the European Commission maintains that, while complementary to (non-public) CBCR to tax administrations, it serves the overarching purpose of enabling public scrutiny of whether tax is paid where profits are produced. CBCR to tax administrations, on the other hand, is designed to assist them in orienting their tax audits and in ensuring compliance, as well as identifying potential harmful tax practices. Arguably, both are ultimately aimed at ensuring tax is paid where profits are produced. The question is what more is gained by 'going public', other than satisfying the public calls for more transparency. It is certainly the case that public CBCR brings with it additional considerations and concerns that need to be balanced with the perceived benefits. The extent to which the Commission has taken these into account in designing the proposal for public CBCR is what is most relevant for multinationals carrying on business in the EU — for example, whether it will lead to additional compliance because of different data points, whether it will lead to a loss of competitiveness through disclosure of confidential business information or by going further than other international norms, or whether it will lead to reputational damage through misinterpretation of 'one-size-fits-all' disclosure formats. Such issues can only be properly evaluated on the basis of a sound understanding of what the different rules say and how they interact with each other. The comparative overview on the following pages should serve as an initial guide for carrying out such an evaluation.

EU CBCR for all sectors

A comparative guide

EU CBCR to tax authorities ('non-public CBCR')

Background and status

The EU rules on CBCR to tax authorities were approved by EU Member States on 8 March 2016 and formally adopted on 25 May 2016. Member States have until 4 June 2017 to implement these rules into their domestic legislation and they will generally apply to periods beginning on or after 1 January 2016.

These rules should be seen in the context of the European Commission's 2015 Action Plan for Fair and Efficient Corporate Taxation, and in particular its January 2016 Anti-Tax Avoidance Package which contained the formal legislative proposal. The rules themselves will amend an existing piece of EU legislation, the EU Directive on Administrative Cooperation (DAC) in the field of taxation (2011/16/EU). The latter has been amended twice recently, firstly to incorporate the OECD's Common Reporting Standard on automatic exchange of information on financial accounts and secondly to provide for the automatic exchange of cross-border rulings within the EU. It was therefore the obvious vehicle to use to incorporate CBCR and the automatic exchange of the reports between EU tax authorities.

The new rules should also be seen in the context of the OECD's final recommendations on BEPS Action 13 issued in October 2015. In order to minimize costs and administrative burdens for both taxpayers and tax authorities, the new EU rules are intended to take into account the OECD standards and are intended to be in line with international developments in this area. It is also the intention that EU Member States should use the OECD's 2015 final report as a source of illustration or interpretation. The new rules represent the EU's attempt to ensure a uniform implementation of the OECD's CBCR rules, and it is not expected that individual Member States would introduce parallel legislation for both sets of rules. Nor should this in general be necessary given the very close alignment between them. Having said that, certain EU Member States already had legislation in place before 2016 reflecting the OECD's report. It should be noted that not all EU Member States are also OECD members.

How will businesses be affected

The EU rules will require affected multinationals to file with EU tax authorities a report on tax and related information concerning the whole group.

Who has to report

A reporting obligation only arises when there is a multinational group and either the ultimate parent or a member of the group is resident in an EU Member State. A multinational group is, broadly speaking, a group of enterprises resident in more than one tax jurisdiction (or with a taxable permanent establishment in another jurisdiction) that prepares consolidated financial statements (or would be required to do so if any members were publicly traded — 'consolidation fiction') and has a total consolidated group revenue of at least 750 million euros (EUR). The term 'enterprises' is widely defined and includes both legal entities and similar entities without legal personality carrying on any form of business.

EU–parented groups: If the ultimate parent of the group is tax-resident in an EU Member State, in principle, only that company needs to file the report.

Non EU–parented groups: If the ultimate parent of the group is tax-resident outside the EU, EU subsidiaries (but not branches) will be required to report ('secondary reporting') if, broadly, any of the following applies:

- the parent is not required to file a report in its jurisdiction of residence
- there is no effective automatic exchange of reports between the parent's jurisdiction and that of the EU subsidiaries
- the parent's jurisdiction does not in practice exchange ('systemic failure').

For these purposes, a subsidiary ('constituent entity') is any 'separate business unit' included in the consolidated financial statements (or which would be included if publicly traded or if not excluded on size or materiality grounds). There is therefore no minimum threshold that needs to be satisfied before a reporting obligation can arise.

Member States are given the option to defer for 1 year the reporting requirement for EU-resident subsidiaries.

As an alternative to all EU subsidiaries filing reports, the group can appoint a single EU subsidiary to file with its local tax authorities. This will satisfy the filing requirements of the other EU subsidiaries (but not necessarily the filing requirements of non-EU subsidiaries under equivalent domestic rules implementing the OECD's CBCR). The EU rules also allow for the appointment of an EU or non-EU subsidiary to report instead of all the EU subsidiaries, as a 'surrogate parent'. For EU subsidiaries, there is no significant practical difference between this and the procedure just described above. Appointing a non-EU subsidiary as a 'surrogate parent' will only satisfy the filing requirements of the EU subsidiaries if none of the three conditions mentioned above in the context of the ultimate parent applies as regards the jurisdiction of the surrogate and the applicable notifications are given. Whether or not a filing by a surrogate parent would satisfy the filing requirements of non-EU subsidiaries under equivalent domestic rules implementing the OECD's CBCR in those jurisdictions will depend on whether similar conditions are satisfied as regards the jurisdictions in question.

Where the report is filed and what happens to it

Although not explicitly stated, it is clearly the intention that the report is filed with the tax authorities of the Member State where the reporting entity is resident. For surrogate parents, the report should be filed with their local tax authorities (for non-EU surrogate parents, this should happen pursuant to their local OECD-based legislation). The local tax authorities then communicate the report to the Member States in which the group has resident subsidiaries or taxable permanent establishments. For non-EU surrogate parents, this should happen pursuant to the applicable international agreements for automatic CBCR exchange. EU tax authorities may use the reports for assessing high-level transfer pricing risks but not as such to serve as a basis for transfer pricing adjustments. However, it is clear that they can be used for wider purposes, such as making further enquiries into other tax matters in the course of a tax audit. The recitals state that the information exchanged "does not lead to the disclosure of" trade secrets and the like, but the risk of such disclosure is not an explicit ground for not exchanging the information. Having said that, the Directive provides that information exchanged is covered by the general official secrecy obligations and the same confidentiality rules that apply in the Member State that receives the information.

Content of report (including whose data and allocation)

The report should cover specified data for the whole group, i.e., all consolidated entities (or deemed consolidated if the consolidation fiction applies). The data should be provided on an aggregated basis for each jurisdiction in which the group operates. The term 'operates' is not defined, but it seems likely that this would be limited to having a taxable business presence. Permanent establishment data should in any event be attributed to the jurisdiction where the permanent establishment is located (and correspondingly excluded from the jurisdiction of the entity to which it belongs).

The data should consist of:

— revenue (related and unrelated party to be shown separately)

— profit/loss before income tax

— income tax paid

— income tax accrued

— stated capital

— accumulated earnings

— number of employees

— tangible assets other than cash or cash equivalents.

In addition, the report should identify each member of the group (including permanent establishments that prepare separate financial statements) and indicate its tax residence (and if different, its country of organization) as well as its main business activity[2].

When reporting is required/timing

The report should be drawn up annually for the fiscal year of the ultimate parent (there is some flexibility as regards the corresponding periods to be included for other members of the group). The report must be filed within 12 months of the end of the year for which the report is drawn up.

The first reporting period is intended to be for fiscal years beginning on or after 1 January 2016. However, in the case of non EU–parented groups, Member States are permitted to defer this date for 1 year.

Format, language, etc. of report

The report should be in the format of the model template annexed to the Directive (this is identical to that contained in the OECD's CBCR report). The language is not specified but will likely be required to be at least in an official or working language of a Member State. The report should specify the currency of the amounts used in the report.

Notifications, penalties, audit, etc.

The Directive prescribes various notification requirements, in particular for EU-resident subsidiaries as regards the identity of reporting members of the group. Member States must provide for penalties. It is expected that Member States would extend their existing transfer pricing penalties as appropriate. The Directive does not lay down an audit requirement.

[2] Notwithstanding the reference to 'residence' in this context, it is presumably the intention that for permanent establishments, this should be the jurisdiction where it is located.

EU public CBCR

Background and status

Shortly after the EU rules on CBCR to tax authorities were approved by EU Member States, the European Commission, on 12 April 2016, issued a draft directive on public CBCR. Before the proposal can be adopted, it will have to be approved both by Member States as well as by the European Parliament. Given the latter's proposals made in 2015 to introduce similar rules, it seems clear that the European Parliament supports the initiative. The real question will be whether they agree that it goes far enough. While tax-related legislation normally requires unanimous approval at EU Member State level, in the case of the current proposal, which would be to amend the Accounting Directive (2013/34/EU), only a qualified majority would be required (i.e., broadly, 16 Member States representing at least 65 percent of the EU population). While Member States are, in principle, free to adopt similar rules unilaterally, such action seems unlikely.

The draft directive does not provide a concrete implementation date, but does provide some provisional timelines. These would mean that, unless Member States adopt the new rules earlier than required, the new rules would first require reporting for financial years beginning on or after 2 years from the date the Directive enters into force (which would be shortly after it is adopted).

The proposal should be seen in the context of the EU's fight against tax avoidance and aggressive tax planning. The plans to address public CBCR were in fact included in the European Commission's Anti-Tax Avoidance Package issued on 28 January 2016. However, the proposal also builds on earlier initiatives, in particular the CRD IV Directive for the financial sector and the Accounting Directive and Transparency Directive for the extractive and logging industries. In fact, the current proposal would amend the Accounting Directive by including CBCR rules for all business sectors (the rules targeting the extractive and logging industries would, however, remain in place). The choice of an amendment to the Accounting Directive remains somewhat controversial given that, as noted above, tax-related EU legislation, notably including the directive on non-public CBCR discussed above, generally requires unanimous approval, whereas the Accounting Directive only requires a qualified majority.

The initiative has three stated aims: 1) to align tax with economic activity, 2) to foster corporate responsibility and 3) to promote public debate on improving tax laws.

How will businesses be affected

Although the rules bear some similarities to the equivalent rules for non-public reporting, there are significant differences. The rules will require affected multinationals to file a report on tax and related information concerning the whole group in an EU commercial register, and also to publish the report on their corporate website.

Who has to report

Although the reporting obligation will be of most relevance for multinational groups, in principle, it can also apply to stand-alone undertakings and to groups or undertakings that only operate within a single tax jurisdiction. However, in all cases, the reporting rules will only apply where either the ultimate parent (or the stand-alone undertaking) or a group subsidiary is an EU undertaking, or where there is otherwise a branch in the EU. Unlike the non-public CBCR, a reporting obligation can therefore potentially arise for an EU branch of a multinational group. In applying these rules, the following should be noted:

Group: This is essentially a group of controlled undertakings that draws up consolidated financial statements. In contrast to non-public CBCR, there is no 'consolidation fiction'. As for non-public CBCR, there is a threshold of EUR750 million. However, this applies by reference to the (consolidated) net turnover, as opposed to 'revenue' as used for non-public CBCR. Net turnover means, broadly, sales and services income net of turnover type taxes.

Undertaking: The rules use the concept of 'undertaking' rather than company, entity, enterprise, etc. to define its scope of application. This term is not defined but would at least appear to extend to investment businesses. There is an overriding limitation regarding the scope of the rules to the effect that they only apply for two types of undertakings. The first consists, broadly, of a list of limited company forms governed by the law of individual Member States, such as a GmbH, ltd or SA. The second consists of a list of partnership forms governed by the law of individual Member States, such as the Dutch CV, or the French SNC, whereby the partners are either EU limited-liability companies on the first list (or their non-EU equivalents) or are limited partners.

Residence: This is not the defining condition for whether the rules apply to a particular undertaking. Instead, the concept of 'governing law' is used. For example, an ultimate EU parent undertaking is one governed by the law of an EU Member State. In many cases, this will, of course, equate to tax residence.

EU–parented groups: If the ultimate parent of the group is an EU undertaking, only that company needs to file the report. In addition, it should publish the report on its website.

Non EU–parented groups: If the ultimate parent of the group is not an EU undertaking, all 'medium-sized and large' EU subsidiary undertakings will, in principle (but see further below), be required to file reports ('secondary reporting') as well as publish them on their website. Whether or not the ultimate parent jurisdiction requires public (or non-public) CBCR is irrelevant in this respect.

For these purposes, a 'medium-sized and large' EU subsidiary (i.e., a controlled undertaking) must exceed two of the following criteria: net turnover of EUR8 million (up to EUR12 million depending on the Member State), balance sheet of EUR4 million (up to EUR6 million depending on the Member State) and 50 employees on average. There is also a similar threshold for branches, but in this case, turnover is the sole size criterion. This may be contrasted with the non-public rules that do not have a minimum threshold for reporting.

As in the case of non-public CBCR, the directive provides for the possibility to avoid the filing obligation for multiple group subsidiaries (or, in this case, branches) by appointing a single subsidiary or branch. Logically, a non-EU subsidiary (or branch) cannot be appointed, as the report must be filed in an EU register and there is no provision for the exchange of reports under this proposal. Exchange is, in any event, not necessary since the register is publicly accessible. The main condition for exercising this option is that the non-EU ultimate parent publishes the report on its website and identifies the undertaking that does the local filing.

There is a special carve-out for EU–parented banking groups in recognition that credit institutions and investment firms in the EU already have to disclose similar information to the public for prudential reporting purposes. The carve-out is intended to avoid duplication of reporting but is tightly worded and, for example, only applies where the banking report covers all the group's operations, including any that are not subject to prudential reporting.

Where the report is filed/published and what happens to it

As indicated above, the report or reports must be filed in commercial (or central or company) registers in individual Member States. Although not explicitly stated, it is presumably the intention that the report is filed with the register of the Member State whose law governs the reporting undertaking, so, for example, a German GmbH would file in Germany, or a Dutch CV would file in the Netherlands. These registers are already used for filing other corporate documents in the EU, such as bylaws and statutory accounts, and are accessible by the public, in some cases on payment of a fee. As indicated above, the report must, in general, also be published on the corporate website of the reporting undertaking. However, in the case of secondary reporting by all EU subsidiaries or branches, it is sufficient for the report to be published on a single group member's website. Where a single EU subsidiary or branch is, instead, appointed to file the report with the local commercial register, as already noted, the report must be published by the non-EU ultimate parent on its own website.

Not surprisingly, there are no provisions dealing with confidentiality and the like, given the public nature of the disclosures. The risk of disclosure of confidential information was one of the main objections to public CBCR, including the possibility that the initiative could be seen as a breach of G20 consensus on confidentiality[3]. The Commission is clearly aware of these concerns, but points out that the information is "largely accessible in the business registers of each Member State. The competitiveness of undertakings will not therefore be affected". These concerns are also behind the use of net turnover[4], with the idea that this data cannot be matched with accounts, and in not splitting out related party data[5].

Content of report (including whose data and allocation)

The report should cover specified data for the whole group, i.e., all consolidated undertakings. The data should be provided separately for each Member State or 'blacklisted' jurisdiction. The intention is that a common EU list of blacklisted jurisdictions will be drawn up by end of 2017 based on internationally accepted transparency and related criteria.

For the rest of the world, the data may be aggregated. Attribution of data to a particular jurisdiction is not as such done on the basis of governing law but rather on the basis of the existence of a taxable fixed place of business or permanent business activity. This will, of course, often equate to tax residence or the existence of a permanent establishment. In the case of tax data (see below), attribution is explicitly on the basis of residence[6].

The data should consist of:

— net turnover, including turnover with related parties

— profit/loss before income tax

— income tax paid

— income tax accrued

— accumulated earnings

— number of employees.

[3] Commission Staff Working Document Impact Assessment SWD(2016) 117, p. 121.
[4] Proposal for a Directive... as regards disclosure of income tax information by certain undertakings and branches, COM(2106) 198 final, Explanatory Memorandum, p. 5.
[5] Commission Staff Working Document Impact Assessment SWD(2016) 117, p. 121.
[6] Notwithstanding the reference in this context to 'branches resident for tax purposes' in a particular jurisdiction, it appears the intention is that attribution would be either on the basis of tax residence or on the basis of the existence of a permanent establishment (branch).

There is no explicit requirement to identify each member of the group, but the activities of the undertakings within each reporting jurisdiction (or jurisdictions) should be briefly described.

As indicated above, net turnover means, broadly, sales and services income net of turnover type taxes. Accrued tax is defined as the current tax expense for activities in the current financial year and does not include deferred tax or provisions for uncertain liabilities. Discrepancies between accrued and paid taxes should be accompanied by an explanatory narrative.

When reporting is required/timing

The report should be drawn up annually for the financial year for which the relevant (consolidated) financial statement is drawn up. The procedural rules for publishing the report in the local registers are the same as for other corporate documents, including financial statements. No specific rules are laid down for the website version, save that, where the group exercises the option to have a single EU subsidiary or branch file locally, the report should be published on the ultimate parent's website no later than 12 months after the balance sheet date. The website versions of the report should, in any event, remain accessible for at least 5 years.

The first reporting period is not specified but depends on the date on which the proposed directive comes into force. Member States would be required to apply the new rules, at the latest, to financial years that commence on or after 2 years after the directive comes into force. In principle, they could therefore apply the rules to earlier periods.

Format, language, etc. of report

The proposed directive does not prescribe a specific format for the report, but as already mentioned, the local rules on corporate filings will apply. It appears intended that the report that is filed in the local register should be the same as the website version. The Impact Assessment paper suggests that the intention is to offer a flexible format[7].

The report should be drawn up in at least one official EU language. The currency should be the same as in the financial statements.

Notifications, penalties, audit, etc.

The proposed directive does not prescribe specific notifications. Member States must provide for penalties. The proposed directive requires auditors to indicate in the audit report whether the report has been 'provided and made accessible' in accordance with its provisions. On the face of it, this does not appear to be a requirement to audit the content of the report, but in practice, it may be that auditors or companies themselves set a higher standard than what is required. Corporate management has collective responsibility for the report.

[7] Commission Staff Working Document Impact Assessment SWD(2016)117, Section 4.1.5.

EU CBCR initiatives for all sectors*

A comparative overview

	OECD BEPS Action 13 (non-public CBCR)	EU non-public CBCR	EU public CBCR
Type of disclosure	Tax authorities	EU tax authorities	Public
Legal basis	OECD BEPS Action 13 recommendations	EU Directive	EU Directive
Legal status	In principle, binding on MCAA signatories, but only to the extent that there is domestic law to implement CBCR	Adopted by Member States 25 May 2016	Pending: proposed Directive issued 12 April 2016
First reporting period	Fiscal years beginning on or after 1 January 2016 (OECD recommendation), or after such date as notified by jurisdiction on signing CAA	Fiscal years beginning on or after 1 January 2016 but option for Member States to defer secondary reporting to 1 January 2017	At the latest, financial years beginning on or after 2 years from date Directive enters into force
Type of reporting	Filing with tax authorities according to model template	Filing with tax authorities according to model template	Publication through filing with local registry and on corporate website
Report timing	Annually, within 12 months of fiscal year end	Annually, within 12 months of fiscal year end	Annually, deadline not stated
Audit requirement	No	No	Yes, in respect of presentation and accessibility
Minimum group threshold	EUR750 million total consolidated group revenue	EUR750 million total consolidated group revenue	EUR750 million consolidated net turnover
Reporting entities	Ultimate parent or secondary reporting	Ultimate EU parent or secondary reporting	Ultimate EU parent or secondary reporting
Secondary reporting	Local entities if no effective exchange with ultimate parent jurisdiction	Local EU entities if no effective exchange with ultimate parent jurisdiction	Local EU entities or branches if no EU ultimate parent
Limited secondary reporting	One local entity can file for all entities in that jurisdiction	One EU entity can file for all EU entities	Website publication can be limited to one group member instead of all EU subsidiaries/branches
Surrogate parent reporting	One entity can file instead of secondary reporting, provided effective exchange with group tax jurisdictions	One EU or non-EU entity can file instead of secondary reporting, provided (if non-EU entity) effective exchange with group EU Member States	One EU entity/branch can file instead of secondary reporting, provided ultimate parent publishes on website
Reporting entity threshold	No	No	No reporting by 'small' EU entities/ branches
Reporting exclusions	No	No	EU–parented groups subject to prudential consolidation (if all activities covered)
Reportable entities	All EU and non-EU consolidated entities	All EU and non-EU consolidated entities	All EU and non-EU consolidated entities
Aggregation of data	By tax jurisdiction of operation	By tax jurisdiction of operation	(1) by EU Member State, (2) by blacklisted non-EU jurisdiction and (3) by all other non-EU jurisdictions
Penalties	Local rules apply	Local rules apply	Local rules apply

* Information may be simplified for comparison purposes

Potentially significant difference

Overall similar provision

EU CBCR initiatives for all sectors*

Specific data

	OECD BEPS Action 13 (non-public CBCR)	EU non-public CBCR	EU public CBCR
Identity, tax residence, governing law and business activity of entity	✓	✓	Business activities in each Member State
Unrelated party revenues	✓	✓	—
Related party revenues	✓	✓	—
Unrelated and related party revenues	✓	✓	Net turnover including turnover with related parties
Profit/loss before tax	✓	✓	✓
Paid income tax	✓	✓	✓
Accrued income tax	✓	✓	✓
—	—	—	Explanation for paid/accrued tax discrepancies
Stated capital	✓	✓	—
Accumulated earnings	✓	✓	✓
Number of employees	✓	✓	✓
Tangible assets (excl. cash)	✓	✓	—

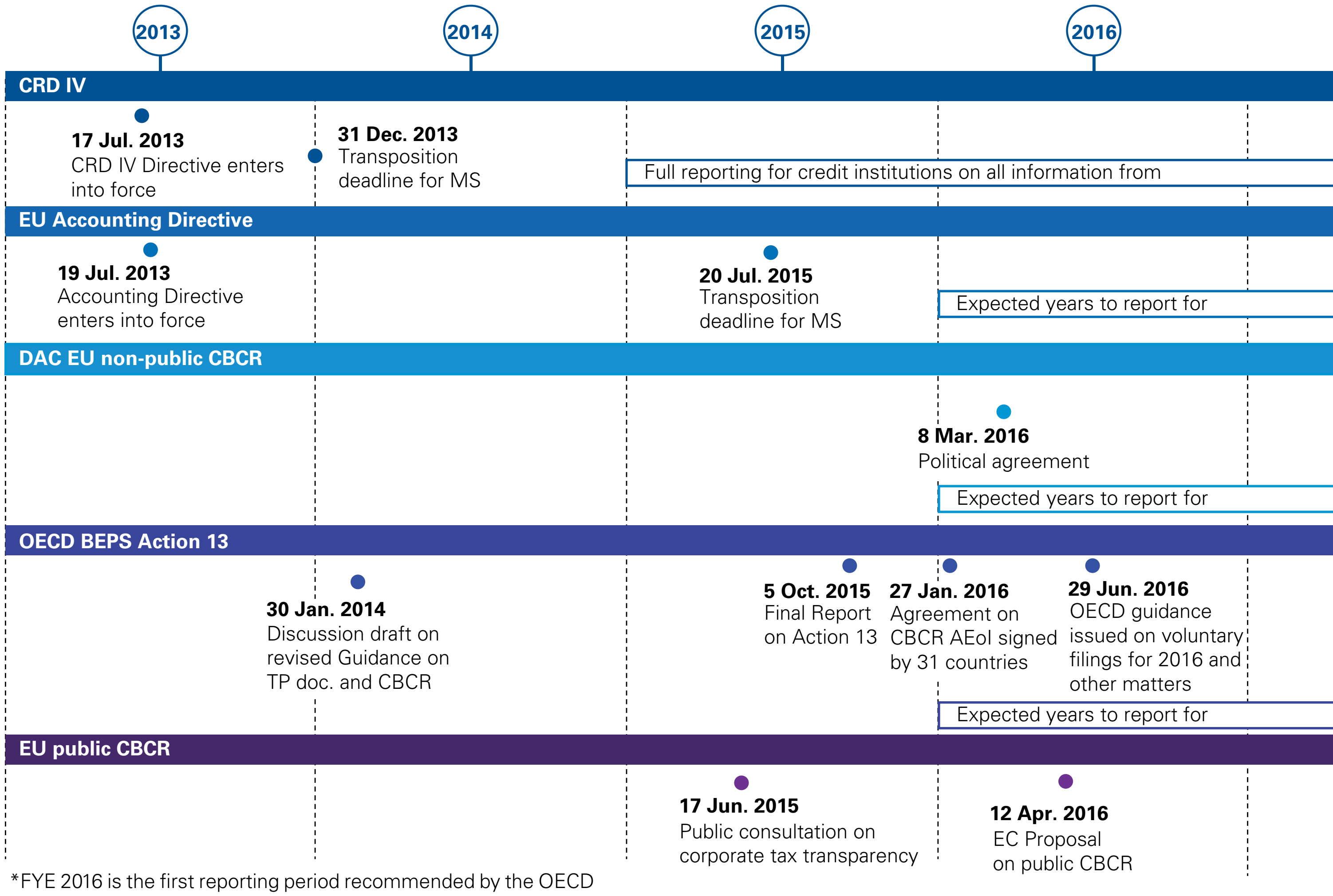
* Information may be simplified for comparison purposes

Potentially significant difference

Overall similar provision

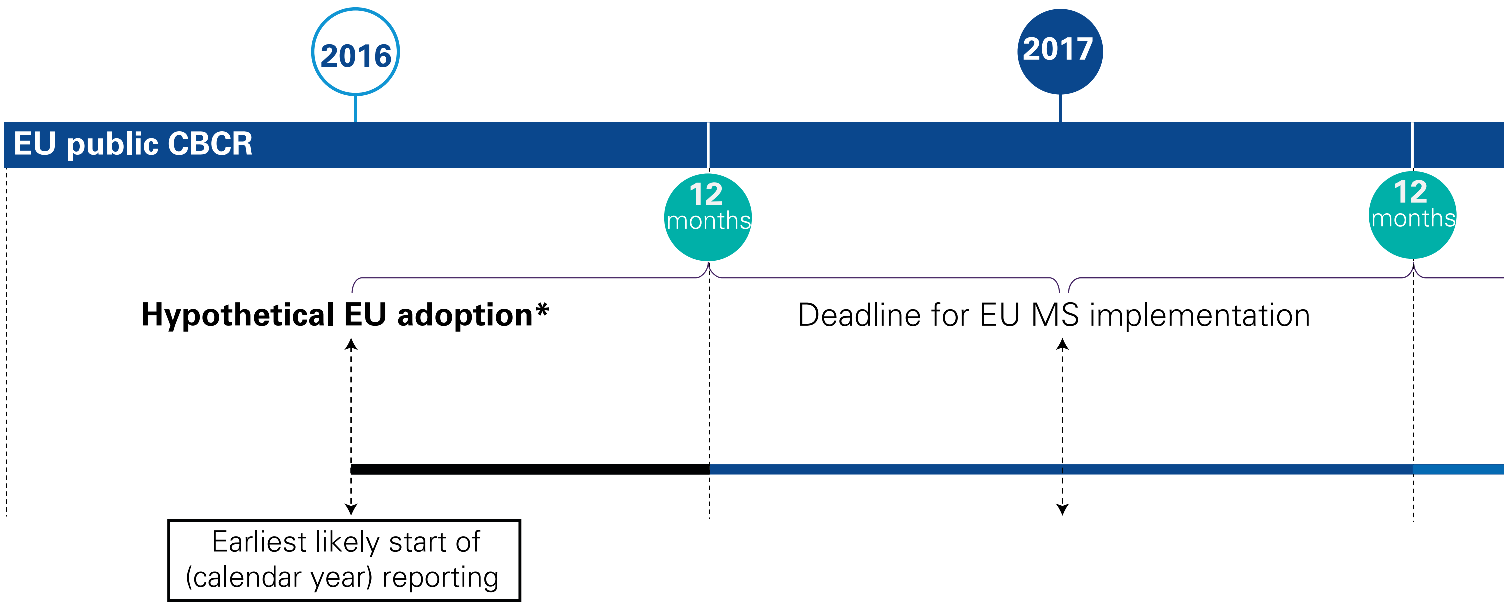
CBCR timelines

CBCR initiatives: general timelines

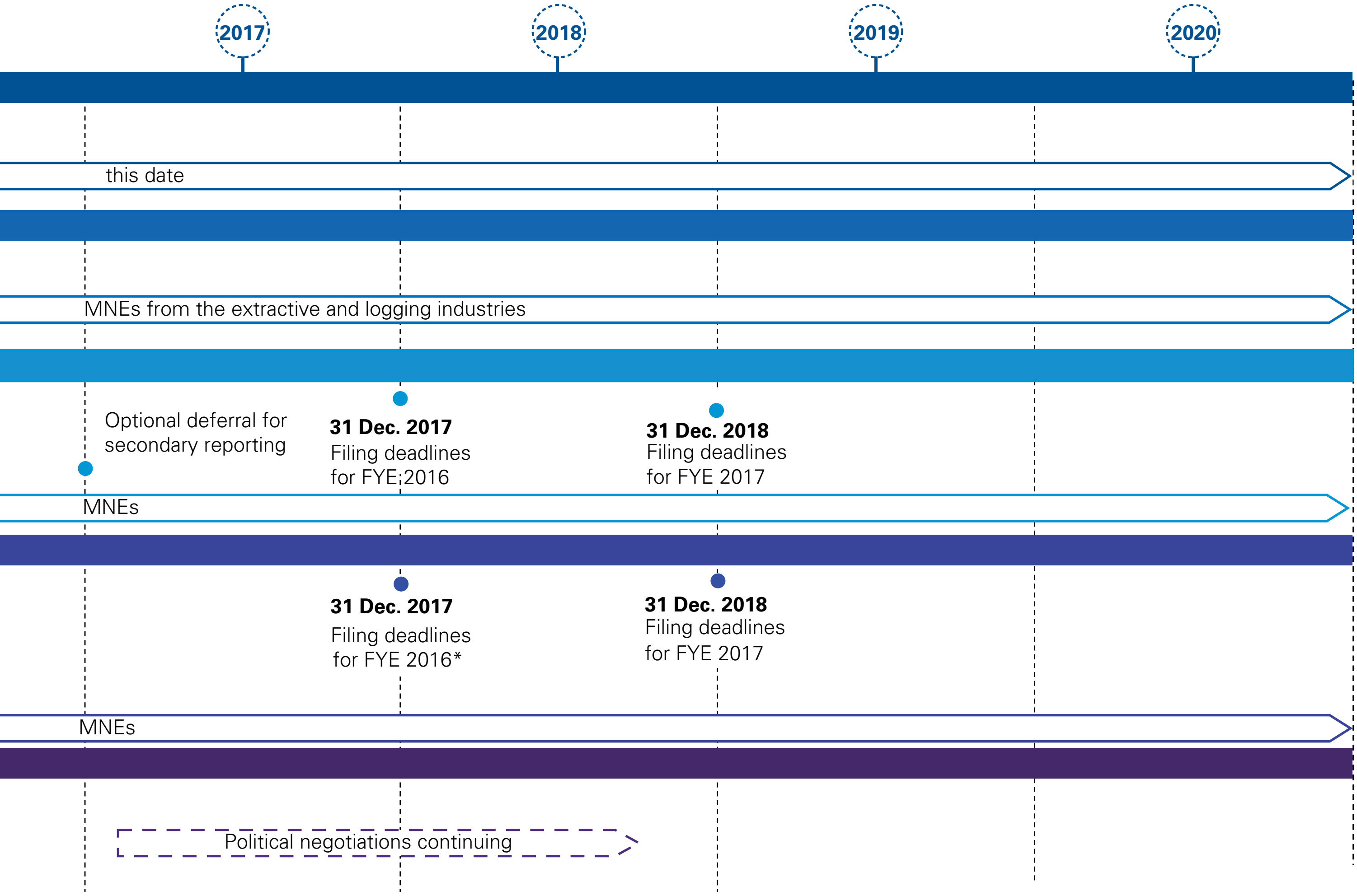


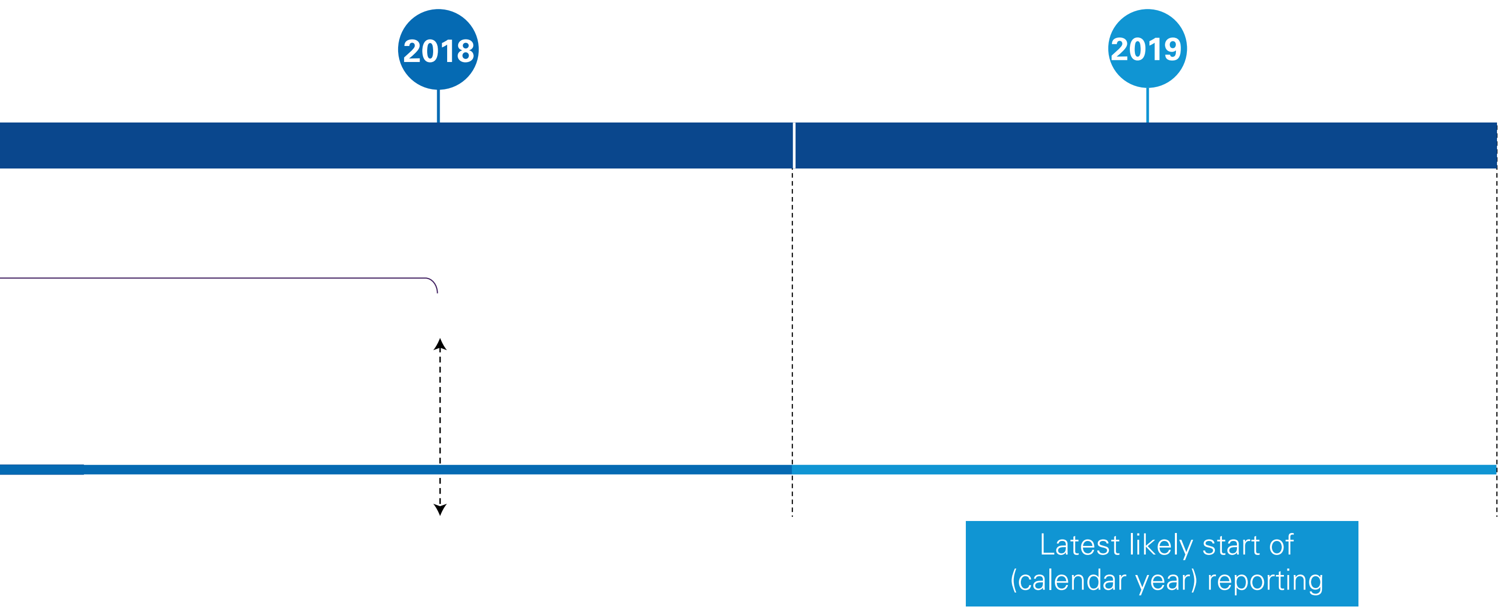
*FYE 2016 is the first reporting period recommended by the OECD

EU public CBCR proposal: likely implementation and reporting scenarios



* Entry into force normally occurs shortly after adoption


2017
2018
2019
2020
this date
MNEs from the extractive and logging industries
Optional deferral for secondary reporting
31 Dec. 2017
Filing deadlines for FYE 2016
31 Dec. 2018
Filing deadlines for FYE 2017
MNEs
31 Dec. 2017
Filing deadlines for FYE 2016*
31 Dec. 2018
Filing deadlines for FYE 2017
MNEs
Political negotiations continuing


2018
2019
Latest likely start of (calendar year) reporting

KPMG CBCR contacts and resources

KPMG CBCR contacts and resources

For further information on how KPMG can help you prepare for corporate transparency, please contact one of KPMG's CBCR core group members, or your local KPMG advisor.

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Online resources

KPMG resources

KPMG BEPS Action 13 — country-by-country implementation: kpmg.com/bepsaction13

KPMG Country by Country Reporting: An overview and comparison of initiatives:
https://home.kpmg.com/content/dam/kpmg/pdf/2016/05/cbc-overview-and-comparison.pdf

KPMG EU Tax Centre: kpmg.com/eutaxcentre

KPMG Global BEPS site: kpmg.com/beps

KPMG Global TaxNewsFlash: kpmg.com/taxnewsflash

KPMG Institutes — BEPS — Tax Transparency: kpmg.com/institutestaxtransparency

Other resources

Council Directive 2016/881 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation:
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0881&from=EN

European Commission dedicated CBCR website:
http://ec.europa.eu/finance/company-reporting/country-by-country-reporting/index_en.htm#cbcr-tax

List of CbC MCAA signatories:
http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/CbC-MCAA-Signatories.pdf

OECD Automatic Exchange Portal on country-by-country reporting:
http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/country-by-country-reporting.htm

OECD Transfer Pricing and Country-by-Country Reporting, Action 13 — 2015 Final Report:
https://www.oecd.org/ctp/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm

Proposal for a directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches:
https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-198-EN-F1-1.PDF

Response to EU public consultation on further corporate transparency:
https://ec.europa.eu/eusurvey/publication/further-corporate-tax-transparency-2015

kpmg.com/tax

kpmg.com/socialmedia

kpmg.com/app

Designed by Evalueserve.

Publication name: Country-by-country reporting — An EU perspective

Publication number: 133590-G

Publication date: August 2016