TAXREP 44/15 (ICAEW REPRESENTATION 121/15)

EUROPEAN COMMISSION – PUBLIC CONSULTATION ON FURTHER CORPORATE TAX TRANSPARENCY

ICAEW submitted its response, online, to the questionnaire *Public consultation on further corporate tax transparency* published by the European Commission on 17 June 2015. We have reproduced the online questions and the ICAEW online responses in Appendix 2 to this paper.

ICAEW is listed in the EU Transparency Register (ID number: 7719382720-34).

This response made on 9 September 2015 was prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 144,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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GENERAL COMMENTS

1. It was only possible to answer the specific questions set out in the questionnaire and any further comment in relation to a specific question was limited to 1,000 characters.

2. In answer to the opening question, number 1, about the best way forward in terms of corporate transparency we answered as set out below. In practice because of the 1,000 character limitation we submitted part of our answer under question 26 “Is there anything else you would like to bring to the attention of the Commission?”

Note:
Some of the questions in this questionnaire have been difficult to answer as the multiple choice question creates something of a straightjacket and does not sometimes permit another answer to be put forward to the particular question. We have ticked “Other” above as that is the only answer which allows us to clarify our position in relation to the question posed.

Transparency is part of the way forward
We believe that transparency has a key role to play in improving the performance of the current international tax regime and in building greater trust in its outcomes. But the OECD BEPS (Base Erosion Profit Shifting) action plan and the Commission’s own action plan Tackling tax evasion and tax avoidance, launched in December 2012, both demonstrate that action is required on many fronts. Some of the questions that follow are built on the premise that transparency will solve all the potential problems which we believe to be unrealistic.

We hope that our responses will be helpful.

Response to the current question one
We welcome current moves towards greater tax transparency but we believe that these need to be coordinated and existing arrangements need to be given time to bed down so that their impact and effect can be properly assessed.

In Europe there are already disclosure requirements under the Accounting, Transparency and Capital Requirements Directives and these need time to come into force and be evaluated.
We have supported the work of OECD and the BEPS Action Plan and in particular Action 13 which requires disclosure of certain tax information to tax administrations but not publication in the public domain. The BEPS Action Plan is the work of 62 countries, including all but four of the 28 EU member states, and is likely to be endorsed at the G20 Summit in November and will provide an additional means of risk assessment for tax administrations in assessing whether individual companies and groups of companies are likely to be properly complying with their tax obligations in any particular country.

Any proposals that the European Commission may put forward need to bear in mind all these other initiatives and the consequences of actions that have already been taken but of which there has not yet been time to evaluate the impact.

3. The other answers given by ICAEW were in response to specific questions, and can be read in Appendix 2, but in relation to question 10 which was the opening question in the section asking about "public transparency of tax-related information" ICAEW responded:

> "ICAEW supports efforts to improve tax transparency and accountability, particularly in resource-rich emerging economies, and broadly welcomes recent EU and international initiatives regarding country by country disclosures. These disclosures should not, however, be made in the annual report, a document produced to meet the information needs of investors.
>
> It is notable that country by country disclosure was one of the least popular potential projects amongst the over 250 organisations that wrote to the International Accounting Standards Board (IASB) about its forward standard setting agenda in 2011, and we expect this to be the outcome of the current consultation on the same topic. The 2013 accounting directive permitted presentation of the country information required from extractive industries to be presented outside of the annual report. It would be critical for this flexibility in delivery of the information to be retained if new EU requirements for public tax disclosures are introduced, This approach is likely to better serve the interests of stakeholders with a particular interest in tax-related country by country information as much as investors; information provided by means of electronic reporting on corporate websites or in a central registry is likely to be more accessible than disclosures located within a lengthy annual report.
>
> For the information disclosed to be most useful and to avoid incremental costs to organisations that may need to comply with multiple regimes, it is important for the various requirements in this area to be aligned as closely as possible. The EU should work closely with authorities in other jurisdictions (particularly in the US) to ensure that this is achieved.
>
> It is also important to be aware that some accounting data can be commercially sensitive and this issue needs to be borne in mind before any changes are made."

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax).

APPENDIX 2

European Commission – Public consultation of further corporate tax transparency

[Note: The answers to the questions are shown in red and the question option that was ticked in responding to the questionnaire is also shown in red.]

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

a) Current tax transparency requirements in the EU are sufficient (*In the EU, enterprises have to make public their annual financial statement and consolidated financial statement which contains limited information on taxes. In addition, a country-by-country reporting has to be prepared and made public by extractive and forestry industries under the Accounting and Transparency Directives. And finally, financial institutions have to prepare and make public annually a country-by-country reporting under the Capital Requirement Directive*)

b) The EU should try to achieve that further transparency initiatives are taken at international level, but it should not act alone and should leave the implementation to Member States

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

d) The EU should be in the forefront and possibly go beyond the current initiatives at international level, for example by extending the current requirements to disclose tax information to the public to all other sectors

e) No opinion

f) Other

Note:

Some of the question in this questionnaire have been difficult to answer as the multiple choice questions create something of a straightjacket and do not sometimes permit another answer to be put forward to the particular question. We have ticked “Other” above as that is the only answer which allows us to clarify our position in relation to the question posed.

Transparency is part of the way forward

We believe that transparency has a key role to play in improving the performance of the current international tax regime and in building greater trust in its outcomes. But the OECD BEPS (Base Erosion Profit Shifting) action plan and the Commission’s own action plan Tackling tax evasion and tax avoidance, launched in December 2012, both demonstrate that action is required on many fronts. Some of the questions that follow are built on the premise that transparency will solve all the potential problems which we believe to be unrealistic.

We hope that our responses will be helpful.

Response to the current question one

We welcome current moves towards greater tax transparency but we believe that these need to be coordinated and existing arrangements need to be given time to bed down so that their impact and effect can be properly assessed.

In Europe there are already disclosure requirements under the Accounting, Transparency and Capital Requirements Directives and these need time to come into force and be evaluated.

We have supported the work of OECD and the BEPS Action Plan and in particular Action 13 which requires disclosure of certain tax information to tax administrations but not publication in the public domain. The BEPS Action Plan is the work of 62 countries, including all but four of the 28 EU member states, and is likely to be endorsed at the G20 Summit in November and will provide an additional means of risk assessment for tax administrations in assessing whether individual companies and groups of companies are likely to be properly complying with their tax obligations in any particular country.

Any proposals that the European Commission may put forward need to bear in mind all these other initiatives and the consequences of actions that have already been taken but of which there has not yet been time to evaluate the impact.

2. A possible new EU initiative on corporate tax transparency would aim at a spectrum of objectives.

2A) Do you agree with the following objectives?

	Yes	No	No opinion
*1. To increase pressure on **enterprises** to geographically align taxes paid in a country with actual profits, by enhanced scrutiny and decisions of either citizens or tax authorities ("enterprises should pay tax where they actually make profit")			**See our answer under 2B below**
*2. To increase public or peer pressure on **countries** to take measures that contribute to more efficient and fairer tax competition between Member States, thus ensuring that the country where profits are generated is also the country of taxation ("Member States should stop harmful tax competition")			**See our answer under 2B below**

*3. To assist **tax authorities** in orienting their tax audits in view of targeting tax evasion or avoidance, i.e. business decisions whereby tax liabilities are circumvented ("help tax authorities orientate their audits on enterprises")	**Yes**		
*4. To align **corporate tax planning practices** with multinational enterprises' own commitment / statement to corporate responsibility, such as their contribution to local and social development ("enterprises should act as they communicate in terms of contribution to welfare through taxation")	**Yes**		
*5. To ensure that **enterprise structures and investments** are more founded on economic motivations and not exclusively on corporate tax-related motivations ("enterprises should structure their investments based on real economic reasons, not just to avoid taxes")	**Yes**		
*6. To **remedy market distortions** based on corporate intransparency and multinational companies' comparative advantage **over SMEs** when engaging in aggressive tax planning ("fairer competition between multinational enterprises and SMEs")	**Yes**		

2B Would you add other objectives, and if so, which ones? Please explain briefly.

1000 character(s) maximum

(Please note: You will be asked to provide more detailed views on specific objectives in further questions)

We believe that greater transparency will play a significant role in improving the international tax arrangements and it is a key building block of the OECD BEPS Action Plan.
Actions 11 to 14 in particular are, for instance, grouped under the heading *Ensuring transparency while promoting increased certainty and predictability.*
We believe that the initial objective of greater transparency and disclosure, as in Action 13 of the BEPS Action Plan, should be to provide tax administrations with information which will allow them to risk assess companies operating in their countries.
Wider objectives, for instance to align tax where profits are earned and where value is created, require a much broader approach as is shown in the different strands, Actions, of the OECD BEPS Action Plan.

We are concerned about the way objectives one and two above have been phrased and did not feel able to endorse them unconditionally. We entirely support the view that better quality information is likely to assist in a more informed debate about the international tax system but the question as phrased seems to be suggesting that transparency should act as an aid to those who are lobbying against particular countries and businesses.

3. The following options have been identified by the Commission services (Please note that certain options may be mutually exclusive).

Transparency towards tax authorities:

Note: OECD BEPS Action 13 recommends that, at State level, very large multinational enterprise (turnover > EUR750m in their country of residence) provide from 2017 onwards a Country-By-Country Report (CBCR) to the relevant tax authority. Tax authorities of G20 and OECD members will then exchange the CBCR submitted to them.

a. OPTION A: No EU Action

Please note that even if there is no EU action, some Member States may implement OECD BEPS Action 13 recommendations. This would allow tax authorities to obtain tax-related information and exchange that information with other participating countries. However, not all Member States may implement BEPS 13 – especially as not all EU Member States are OECD Members.

b. OPTION B: Implementation of BEPS 13 at EU level

The EU would recommend or require, as recommended by BEPS 13 , that enterprise disclose tax-related information on a country-by-country basis to the relevant tax authorities. Each ultimate parent enterprise filing a tax return with any of the relevant EU tax authorities would be covered. Its own worldwide consolidated operations would be reported.

Transparency towards the public:

c. OPTION C: Publication of anonymised/aggregated data by the EU tax authorities

The EU would recommend or require the disclosure by enterprises of tax-related information to tax authorities (possibly based on BEPS 13 recommendations). Moreover, aggregated or anonymised data would be made available to the public in order for the public to have access to tax-related information.

d. OPTION D: Public disclosure of tax-related information by either enterprises or tax authorities

The EU would require enterprises to disclose tax-related information on a country-by-country basis. The information would be made available to the public either directly (e.g. as part of their annual reporting obligations) or by national tax authorities in, for example, a public register. This option may consist in extending to all sectors the country-by-country reporting requirements currently in place for financial institutions.

e. OPTION E: Publicly available corporate tax policies

The Commission would require enterprises to report on their approach towards tax compliance and planning (tax management).

3A) Are there other appropriate options in relation to extending corporate tax transparency, such as reporting requirements for tax advisors? Please explain briefly.

1000 character(s) maximum

We think that disclosure, and reporting requirements, should concentrate at the company level so that there is an appropriate understanding of company actions and results. We do not think that additional reporting by tax advisors would necessarily add anything.

3B) Please rate below how well each option would achieve the identified primary objectives

Please use the following possibilities:

- Insert a **+** (plus) to indicate that the option achieves the objective
- Insert a **0** (zero) to indicate that the option has no effect
- with respect to the objective Insert a **-** (minus) to

  indicate that the option runs counter to the objective
- Leave empty to indicate that you have no opinion

	1. Enterprises should pay tax where they actually make profit	2. Member States should stop harmful tax competition	3. Help tax authorities orientate their audits on enterprises	4. Enterprises should act as they communicate in terms of contribution to welfare through taxation	5. Enterprises should structure their investments based on real economic reasons, not just to avoid taxes	6. Fairer competition between multinational enterprises and SMEs
A) No EU action	-	-	-	-	-	-
B) Implementation of BEPS 13 at EU level	+	0	+	0	+	+
C) Publication of anonymised/aggregated data by the EU tax authorities	0	0	0	0	0	0
D) Public disclosure of tax-related information by either enterprises or tax authorities	0	0	0	0	0	0
E) Publicly available corporate tax policies	+	0	+	+	+	+
F) Other (as described in 3A)						

3C) In your opinion, which would be the most appropriate option(s)?

Please select one or several options

a. OPTION A: No EU Action

b. OPTION B: Implementation of BEPS 13 at EU level

c. OPTION C: Publication of anonymised/aggregated data by the EU tax authorities

d. OPTION D: Public disclosure of tax-related information by enterprises

e. OPTION E: Publicly available corporate tax policies

The following questions examine in more depth the possible features of each option, and their potential impacts

OPTION B - EU INITIATIVE ON TRANSPARENCY TOWARDS TAX AUTHORITIES, BASED ON OECD BEPS

4. What information should necessarily be disclosed by enterprises to the tax authorities?

Please select one or several options

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

b. Public subsidies received

c. Explanatory narrative information on tax-related information

d. Other

e. No opinion

f. None

Please specify what information should necessarily be disclosed by enterprises to the tax authorities:

1000 character(s) maximum

The proposals in BEPS Action 13 have been agreed after considerable public consultation over the past two years and we believe those recommendations should be followed.

5. What EU entities should be covered?

Please select one single option

a. Very large enterprises with revenue of EUR 750M in their country of residence or larger enterprises + (as recommended in the BEPS 13)

b. At least large enterprises or groups (to be defined more specifically)

c. Other

d. No opinion

Please specify what other EU entities should be covered:

1000 character(s) maximum

We believe that in the main the threshold laid down in BEPS Action 13 ought to be followed and this threshold should be allowed to bed down and the impact assessed before considering whether a general extension to other companies might be called for .

However we do note that Directive 2014/95/EU, regarding other non-financial information, targets public interest entities with an average of 500 or more employees.

6. At enterprise level:

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

a) This will have no effects on enterprises' tax planning

b) This will ensure that enterprises comply with tax rules and do not use tax gaps, mismatches and/or loopholes in tax rules in order to minimise the taxes they pay
c) Enterprises will voluntarily shift profits back to where they are generated so that they have to pay more taxes than they did before
d) Other
e) No opinion

Please specify in what other ways enterprises will need to change their tax planning or structure as a result of being more transparent towards tax authorities:

1000 character(s) maximum

Tax systems are constantly changing and evolving and there is, in the UK, a continuing dialogue between government, taxpayers and tax advisers on tax policy and amendments to existing policy. ICAEW submits more than 70 formal papers to government each year in relation to policy changes and initiatives in addition to many informal contacts and discussions.
In addition, in the UK, there is real time working between the tax authority and the largest businesses along the lines of the OECD cooperative collaboration model. This has had an impact on acceptable behaviours and allowed the tax administration to challenge behaviours which it considers to be inappropriate.
In the past couple of years the relatively sedate discussions at OECD level about amendments to the international tax arrangements have been "turbo-charged" under the BEPS Action Plan which will lead to significant changes to international tax arrangements as well as domestic law changes.
In addition there has been a very considerable diminution in the appetite of business to carry out tax behaviours which are likely to be found to be unacceptable by the tax authorities.
In the UK enterprises are already being transparent towards tax authorities and this is having an influence on behaviours. The extent to which there will be further changes in behaviour as a result of more transparency is difficult to gauge.

6B) Please explain which mechanism would incentivise enterprises to change:

1000character(s)maximum

The OECD BEPS proposals will have an impact on the tax rules which will in turn affect the way that business organises its affairs.
There is a clear sense that any tax planning must reflect economic and business reality.
As mentioned above there is a changed climate as to what is, or is not, acceptable tax behaviour.

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

Please select one or several options

a. Reallocation of tax bases within Europe

b. Increase in tax paid in Europe

c. Decrease in tax paid in Europe

d. Increase in tax paid outside the EU

e. Decrease in tax paid outside the EU

f. Other

Please specify what other consequences would further tax transparency towards tax authorities have in terms of public finance: *1000 character(s) maximum*

It is impossible to give a precise answer and certainly not possible to reach an overall conclusion as to the aggregate impact on the public finances. Undoubtedly the requirement to disclose information if OECD BEPS Action 13 is implemented by countries will provide tax authorities with a further risk assessment tool to determine whether they feel that the tax planning of particular companies is appropriate.

Please explain briefly, if possible with figures, your answer on the possible further consequences tax transparency towards tax authorities would have in terms of public finance?:

1000 character(s) maximum

We are not able to provide any precise figures in answer to this question.

8. Can you provide an estimation of any additional costs and resources that will be incurred by enterprises in preparing a consolidated CBCR in accordance with BEPS 13?
Please explain, with details of what information is not currently available and if possible with figures:

We are not able to provide any precise figures in answer to this question.

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

Please select one single option

a. Constitute a feature of a growth friendly environment and foster the attractiveness of the EU as a place to invest.

b. No consequence

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

d. No opinion

Please explain briefly your answer on the consequence tax transparency towards tax authorities would have in terms of fostering a growth friendly environment and the attractiveness of the EU as a place to invest:

1000 character(s) maximum

Tax transparency is only one element of the OECD BEPS Action Plan which is the main prospective change to the international tax environment and it is impossible to gauge what effect a change in any single areas is going to have on the overall tax situation.
We do have concerns that without a properly functioning dispute resolution mechanism there is going to be much more discord between business and tax authorities and that may well be detrimental to growth. But that is a worldwide problem and not restricted to the EU.
We do believe that good tax policy plays an important role in creating a growth friendly environment.

OPTIONS C and D - EU INITIATIVE TOWARDS FURTHER PUBLIC TRANSPARENCY OF TAX-RELATED INFORMATION

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

ICAEW supports efforts to improve tax transparency and accountability, particularly in resource-rich emerging economies, and broadly welcomes recent EU and international initiatives regarding country by country disclosures. These disclosures should not, however, be made in the annual report, a document produced to meet the information needs of investors.

It is notable that country by country disclosure was one of the least popular potential projects amongst the over 250 organisations that wrote to the International Accounting Standards Board (IASB) about its forward standard setting agenda in 2011, and we expect this to be the outcome of the current consultation on the same topic. The 2013 accounting directive permitted presentation of the country information required from extractive industries to be presented outside of the annual report. It would be critical for this flexibility in delivery of the information to be retained if new EU requirements for public tax disclosures are introduced, This approach is likely to better serve the interests of stakeholders with a particular interest in tax-related country by country information as much as investors; information provided by means of electronic reporting on corporate websites or in a central registry is likely to be more accessible than disclosures located within a lengthy annual report.

For the information disclosed to be most useful and to avoid incremental costs to organisations that may need to comply with multiple regimes, it is important for the various requirements in this area to be aligned as closely as possible. The EU should work closely with authorities in other jurisdictions (particularly in the US) to ensure that this is achieved.

It is also important to be aware that some accounting data can be commercially sensitive and this issue needs to be borne in mind before any changes are made.

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

Please select as many options as necessary among the following 6 categories:

- Information required both under CRD IV and BEPS 13 (this information is already publicly disclosed by financial institutions):
a. Name
b. Nature of activities
c. Location
d. Revenue
e. Number of employees
f. Profit or loss before tax
g. Income tax (paid and accrued)

- Additional BEPS 13 information (normally to be made available to tax authorities):
h. Revenues split between related and unrelated parties
i. Stated Capital
j. Accumulated earnings
k. Tangible assets
l. List of subsidiaries of the parent enterprise operating in each country

- Additional information currently required from financial institutions:
m. Public subsidies received

- Information normally exchanged between tax authorities:
n. Tax rulings (based on definition as proposed by the Commission in March 2015)
- Options provided for in the Accounting Directive:
o. Employees working through subcontractors
p. Pecuniary tax-related penalties administered by a country

- Other tax-related information:
q. Narratives explaining certain key features of the tax-related information
r. None
s. Other information
t. No opinion

Please specify what other information would it be absolutely necessary to include in a publicly available CBCR:
1000 character(s) maximum

Please explain briefly your answer on what information would it be absolutely necessary to include in a publicly available CBCR:
1000 character(s) maximum

As we noted in our answer to question one there are currently a number of initiatives in relation to greater disclosure of information which have not had time to bed in and be properly evaluated. We believe that this needs to be done before there can be any clear indication that more information is required.

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

Please select one or several options

- ☐ a. Aggregated revenue
- ☐ b. Aggregated number of employees
- ☐ c. Aggregated income tax paid and accrued ☐ d. Aggregated tangible assets
- ☐ e. Ratio: Aggregated income tax paid or accrued/aggregated profit or loss before tax
- ☐ f. Ratio: Aggregated income tax paid or accrued/aggregated revenue ☐ g. Analysis per sectors of activity
- ☐ h. None ☐ i. Other
- ☐ j. No opinion

Please specify what other information should be provided by those authorities (on a country-by-country basis), in the case of tax authorities publishing aggregated/anonymised information based on returns filed by enterprises with them:
1000character(s)maximum

We are not convinced that the publication of aggregated/anonymised information is an appropriate way to provide information about how the international tax system is working.

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

No

14. What entities should be covered?

14a) Size *Please select one single option*

a) Very large enterprises with revenue of EUR 750M or larger enterprises + (as recommended by the BEPS 13)
b) At least large enterprises or groups (to be defined more specifically)
c) Other
d) No opinion

Please specify what other entities size provisions you would consider:

If publication of CBCR tax information would be required, our answer would be identical as to question 5.

14b) Connection with EU markets *Please select one or several options*

a) Enterprises with securities listed in the EEA
b) Enterprises established in the EEA
c) If feasible, enterprises not established in the EEA and controlling operations in the EEA
d) Other
e) No opinion

Please specify what other connections with EU markets you would foresee:

If publication of CBCR tax information was required, then in order to minimise the competitiveness risk for companies established in the EU/EEA, it would be necessary to consider whether non-EU/EEA companies that meet the size threshold, and have sufficient connections with the EEA, should also be covered.

We note that Capital Requirements Directive IV already imposes a country by country reporting requirement on an entity that otherwise has no financial reporting requirement in the UK if it has some link to the UK or another member state.

15. What operations should be covered?

a) Enterprises' operations within the EEA only
b) Enterprises' operations in the EEA and outside the EEA when controlled from the EEA
c) If feasible, enterprises' operations in the EEA and outside the EEA even if not controlled from the EEA.
d) Other
e) No opinion

Please explain briefly your answer on the operations that should be covered:

One stated purpose of public CBCR of tax information is to obtain a picture of a multinational´s global tax payments and tax planning strategy, and to see whether a multinational pays taxes *somewhere.*

Another purpose often stated is that transparency on tax payments in developing countries will increase public accountability of the recipient governments.

Both of these aims will not be reached if public country by country tax information is only made available for EU countries. Such requirement would thus create an unnecessary burden for companies operating in the EU..

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

Yes

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

Yes

Please explain briefly the risks and their consequences on companies implied by tax transparency towards the public:

There is a risk that figures published in the public domain may be taken out of context and used in a misleading way, for instance, potentially generating anti-business sentiment.

It would also be necessary for there to be properly defined reporting requirements to ensure that the administrative burden placed on companies results in more useful, and informative, data.

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

We believe there has to be coordination in whatever disclosure requirements are going to be put in place as there is as part of the OECD BEPS Action Plan. Any unilateral moves by the EU, or by other countries, are almost certain to cause confusion and needless compliance burdens on business.

19. At enterprise level:

19A) How would you assess the extent to which enterprises will need to change their tax planning following further tax transparency *towards the public*? *Please select one single option*

a) This will have no effects on enterprises' tax planning
b) This will ensure that enterprises comply with tax rules and do not use tax gaps, mismatches and/or loopholes in tax rules in order to minimise the taxes they pay
c) Enterprises will voluntarily shift profits back to where they are generated so that they have to pay more taxes than they did before
d) Other
e) No opinion

Please specify in what other ways enterprises will need to change their tax planning following further tax transparency towards the public:
Please explain briefly your answer on how would you assess the extent by which enterprises will need to change their tax planning following further tax transparency towards the public:

We believe there has to be coordination in whatever disclosure requirements are going to be put in place as part of the OECD BEPS Action Plan. Any further moves by the EU, or by other countries, could cause confusion and introduce more compliance burdens on business.

19b) Please explain which mechanism would incentivise enterprises to change?
In particular, please specify to what extent a public disclosure would have a greater effect than a submission only to tax authorities?

We are concerned about any proposal for public disclosure when having consulted widely on this issue the OECD has concluded that limited disclosure, to tax administrations only, is the appropriate course of action.

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

Please select one or several options

a) Reallocation of tax bases within Europe
b) Increase in tax paid in Europe
c) Decrease in tax paid in Europe
d) Increase in tax paid outside the EU
e) Decrease in tax paid outside the EU
f) Other

g) No opinion

Please explain briefly your answer on the possible additional effect tax transparency towards the public would have on public finance in addition to transparency for tax authorities only:

We do not yet know what impact the results of the OECD BEPS Action Plan is going to have on domestic and international tax arrangements and on tax behaviours of business so it is not possible to evaluate the impact of greater public transparency in isolation.

21. What consequence would tax transparency *towards the public* have in terms of fostering a growth friendly environment and the attractiveness of the EU as a place to invest?
Please select one single option

a) Constitute a feature of a growth friendly environment and foster the attractiveness of the EU as a place to invest.
b) No consequence
c) Hamper the fostering of a growth friendly environment and negatively impact the attractiveness of the EU as a place to invest.
d) No opinion

Please explain briefly your answer on the consequence tax transparency towards the public would have in terms of fostering a growth friendly environment and the attractiveness of the EU as a place to invest:

Tax is one element, albeit an important one, of public policy. We have concerns that advocating too much public disclosure could fuel anti-business sentiment and would not necessarily, for instance, create a better understanding of how the international tax system operates..

22. Should the information prepared by enterprises be specifically verified by an independent assurance service provider (e.g. an auditor)? *Please select one single option*

a) No, the information should not be verified
b) Limited verification is needed (existence of such report, consistency check)
c) Extensive verification is needed (e.g. audited)
d) Other
e) No opinion

Please specify in what other way information prepared by enterprises should be specifically verified by an independent assurance service provider (e.g. an auditor):

Quite a lot of our members are clear that if additional information is to be provided it should not be part of the audited accounts which are mainly required to give assurance to investors, particularly in public markets. But our members are equally of the view that if any additional information is to be provided then it needs to be sufficiently robust to command the confidence of the people who are going to make use of it.

So it is likely that quite a lot of work, akin to an audit, would be required in order to ensure the robustness of the information provided. Amongst the reasons for this are:

- Verification by an independent assurance service provider enhances confidence in the reliability of the information. In the absence of such verification, there is a risk that the information could be manipulated by enterprises wishing to conceal the complexity of their tax arrangements, or could be misstated in error where enterprises have not set up appropriate systems and controls to reliably collect and report the information
- Whilst limited verification is possible, it will not always be possible to restrict this to limited checks on consistency because of complexities in collecting the data, and it would not provide the same level of confidence in the information

23. Should there be additional safeguards in terms of specific rules for the protection of data and business secrets?
Please note that in the absence of specific rules, the EU general EU data protection rules would apply.
Please select one single option

Yes

If so, which safeguard are necessary in relation to which types of information?
Please explain briefly:

Any obligation to publish CBCR tax information should clearly exclude personal data and business-sensitive information.

24. Please estimate additional costs and resources entailed by the introduction of further transparency measures for enterprises compared to an implementation of OECD BEPS Action 13 at national level and identify information which is not currently available. You may distinguish between additional cost for public authorities and additional costs for enterprises, based on your preferred option(s).
Please explain, if possible with figures:

The publication of CBCR information will not produce considerable extra cost, in addition to the cost of providing the same information to tax authorities. It would be different if the requirement to make public disclosures affected businesses not covered by BEPS Action 13.

We are concerned that information in the public domain may be used out of context to the detriment of the companies involved which would potentially have to allocate resources to defending themselves against accusations, which may not be well founded, of inappropriate behaviour.

OPTION E - EU INITIATIVE TOWARDS PUBLIC TRANSPARENCY OF CORPORATE TAX POLICY

25. Would you support a mandatory description of tax management policies by enterprises?

a) Yes, instead of any public disclosure of tax-related information
b) Yes, in addition to further public disclosure of tax-related information
c) No
d) No opinion

Please explain briefly your answer on your possible support a mandatory description of tax management policies by enterprises:

We ticked the final option d) above as we did not completely agree with any of the other three choices and, therefore, have another opinion rather than "no opinion".

We believe there is merit in the largest companies disclosing their tax management policies "codes of practice on taxation" as is being suggested in a current public consultation in the UK *Improving Large Business Tax Compliance.*

Final remarks

26. Is there anything else you would like to bring to the attention of the Commission?

No.