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**Subject: Comments on OECD secretariat's Review of Country by Country Reporting ("CbCR")**

BDO is one of the largest full-service audit, tax and advisory organisations in the world. We have over 80,000 people across 1,591 offices in 162 countries. Our global organisation focuses on supporting entrepreneurially spirited, ambitious businesses.

We appreciate the opportunity to submit our comments on the public consultation document titled "**Review of Country-by-Country Reporting (BEPS Action 13)**" that was released by the OECD on 6 February 2020 and provide our input into the OECD's review of this important tax policy matter.

We support the OECD's efforts to create a fairer tax system and the objectives of BEPS Action 13. We understand the need for tax administrations to have appropriate information required to undertake high level risk assessments. We agree that is both desirable and sensible to undertake periodic reviews to ensure that CbCR is delivering the information required by tax administrations.

We believe that it is important that the concerns of business are fully considered during the review process and that CbCR remains true to its original purpose as a tool to aid risk assessing by tax administrations. In particular, CbCR needs to be consistent across jurisdictions, should not impose a disproportionately onerous compliance burden on businesses and should not disclose sensitive commercial information.

We consider that any significant changes to the current approach should be rigorously analysed from the perspective of all stakeholders and in the context of the current and future international tax environment. This environment has evolved significantly since the publication of Action Plan 13 in 2015, not least because of the developments in the digital tax agenda and a number of regulatory and reporting obligations that have been introduced since then.

In summary, our main message is a request that any proposed changes are thoroughly and widely debated because the additional compliance burden that would result in many instances should be justified by quantifiable benefits to the risk assessing process from the standpoint of both MNEs and tax administrations.

If you have any questions or would like any further detail, please do not hesitate to get in touch with us. We look forward to working with you and supporting you as you continue your work in this area.

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## Overarching comments and responses to questions

*Q1. What comments do you have regarding the general status of implementation of CbC reporting by members of the Inclusive Framework?*

Although the framework was introduced several years ago, implementation of CbCR has been undertaken at different times by jurisdictions and, therefore, the picture continues to evolve. A common plea from business in relation to the rules is for consistency and stability.

For example, some jurisdictions require the information in unique formats whilst others use different definitions for items such as employees. Consistency would reduce the compliance burden.

Another example concerns notification rules, these can vary significantly between jurisdictions in terms of the format and timing of the notification.

We would welcome measures that reduce such inconsistencies without requiring major changes to the CbCR system as a whole.

*Q2. 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?*

We have limited visibility of the use of CbC reports by tax administrations. It would be helpful to understand how they are being used and any statistical data to support that. It may be appropriate for the revised CBC rules to include a duty for tax administrations to publish such data (perhaps coordinated by the OECD) and illustrate how it has been used.

*Q3. 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?*

Once again the desire is for consistency. Requests or rules in individual countries that go beyond Annex I not only increase compliance costs but contravene the intent of Action 13 to implement consistent level of data available to tax administrations. We firmly believe that for the rules to continue to command support consistency and simplicity is paramount.

*Q4. 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?*

*Q5. 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?*

*Q6. 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?*

*Q7. 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?*

*Q8. 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?*

*Q9. 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?*

Any proposals to widen the scope of businesses that fall within CbC reporting should be considered extremely carefully. Action 13 was targeted at certain types of business for good reasons and any attempt to expand it might have unintended and onerous compliance consequences. It could mean, for example, that individual shareholders who have controlling interest in a number of groups which together exceed the CbCR threshold would be within scope. There is also the risk that different jurisdictions take differing approaches to adopting a widened scope - creating more complexity for MNEs.

Any proposals to widen the scope of CbCR should be subject to rigorous analysis of the intended benefits and potential negative consequences. If changes are proposed, the OECD should do all it can to ensure that they are acceptable to the majority of jurisdictions so that adoption of them is as widespread as possible.

*Q10. Are there any benefits from reducing the consolidated group revenue threshold, in addition to those described in this document?*

*Q11. Are there any practical challenges to MNE groups resulting from reducing the consolidated group revenue threshold, in addition to those described in this document?*

Reducing the threshold would appear to have few advantages for businesses in that it would bring more within the scope of CbCR. Smaller businesses may have fewer and less sophisticated resources to help with the compliance process and may, therefore, suffer a greater compliance burden relative to larger businesses currently within scope. In the absence of comprehensive data from tax administrations, it is difficult to measure the effectiveness of CbCR and therefore, assess whether a reduction in the threshold is justifiable.

*Q12. Are there any benefits from each of the options for re-basing a non-EUR denominated threshold, in addition to those in this document?*

*Q13. 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?*

*Q14. 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?*

No comment.

*Q15. Are there any other options for re-basing a non-EUR denominated threshold that should be considered, in addition to those in this document?*

*Q16. 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?*

*Q17. 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?*

*Q18. 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?*

*Q19. Are there any benefits from including extraordinary income in consolidated group revenue, in addition to those in this document?*

*Q20. Are there any practical challenges to MNE groups from excluding extraordinary income in consolidated group revenue, in addition to those in this document?*

*Q21. 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?*

We do not have any particularly strong views on these issues (Qs15-21) other than the general request not to amend the rules unless there is a particularly compelling reason for doing so.

*Q22. 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?*

*Q23. 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?*

*Q24. 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?*

The point that we would raise in relation to these questions is that if investment gains were to be effectively recorded in revenues, then investment funds would be brought within the regime which would clearly have compliance costs for them. We would question whether

monitoring mainstream investment funds was within the original objectives of BEPS Action 13: if they are not thought to constitute a high risk, a specific exclusion for investment funds should be considered.

*Q25. 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.*

We have no preference for either option but, as referred to above, we support any change that increases clarity and uniformity of approach by different jurisdictions.

*Q26. 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?*

No comment.

*Q27. Are there any benefits from including constituent entity information in Table 1, in addition to those in this document?*

*Q28. 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?*

The potential benefit of including constituent entity information in Table 1 appears to be that there will be additional data available to tax administrations for risk assessing purposes. The extent of the benefit is not entirely clear, not least because of the lack of data relating to the implementation of CbCR to date.

There are real and widespread concerns from MNE groups relating to the proposal. The compliance burden for some could increase substantially, not just in terms of volumes of data but also potentially because systems and processes may need to be changed or added in order to produce data on an entity basis.

The proposal would potentially change the policy goal of CbCR from being a high risk identification tool to a far more detailed document. The level of information required would consume significant additional resources not only for MNEs but also for tax administrations. This would be multiplied if tax administrations continue to customise the requirements of Table 1 for their own jurisdiction as noted elsewhere in this document.

Therefore given the potential considerable additional costs that would be incurred and the questionable benefits to be gained we would suggest that this proposal should not be recommended. Failing that, any review should be deferred for at least two or three years until further data has been gathered as to the impact and benefits of CbCR.

*Q29. Are there any benefits from requiring the use of consolidated data in Table 1, in addition to those in this document?*

*Q30. 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?*

We have not identified any significant benefits in addition to those mentioned in the consultation document. There are some clear practical challenges that should be explored fully if this proposal is to be considered further. These mainly arise from the fact that many businesses do not produce consolidated data as envisaged in the document. Therefore considerable additional costs would need to be incurred for many MNEs in terms of investing in processes and resources that would produce such data. Such costs, and the general lack of a mandatory requirements to produce such data, are the reason why many businesses have not compiled consolidated data in the past.

In addition, many MNEs the business do not structure their operations based on legal entities but by divisions. The task of compiling consolidated data for such organisations would be likely to be particularly burdensome and potentially disproportionate to any resulting benefits for tax administrations.

*Q31. 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?*

*Q32. 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?*

*Q33. 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?*

We do not consider there would be significant advantages from including an additional column in Table 1 in addition to those contained in the document.

There would be almost certainly a considerable additional compliance burden for some businesses if this idea were to be implemented and we would question the value of doing so from a risk assessment perspective. As the document notes much of the proposed additional information would already be included in tax returns. There may also be potential duplication of the content provided in an MNE's Master File. There is a risk therefore of duplication and once again straying from the core policy aim of CbCR of providing the data for a high level risk assessment.

We have concerns that the challenges for some MNEs of providing the further data as proposed may be underestimated in the document. For instance supplying deferred tax data in a consistent and meaningful way would, in many cases, require accounting expertise not only on the part of the MNE but also the tax administration reviewing the data. The potential for onerous compliance costs and, potentially, misinterpretation of data contained in the report is likely to be significant.

Any additional guidelines or instructions needed to assist MNEs in compiling such data would, in our view, need to be sufficiently detailed to encompass the complex issues that would be likely to arise and should be developed with considerable thought and collaboration with appropriate stakeholders.

*Q34. For each of the possible approaches considered in this section, are there any benefits in addition to those in this document?*

*Q35. 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?*

We do not consider there to be material benefits in addition to those in the document. The concern to MNE groups would be the potential additional compliance burden of complying.

*Q36. 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?*

*Q37. 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?*

No comment.

*Q38. Are there any benefits from including standardised industry codes in the CbC report template, in addition to those in this document?*

*Q39. 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?*

*Q40. 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?*

Whilst the proposal to include standardised industry codes is ostensibly attractive in terms of providing consistency, in practice we would have concerns about their use and reliability in practice. The reason for this results from practical experience of using them over many years for transfer pricing purposes where codes may not be exactly matched to an entity's activity, or activities or where the code is no longer in use or the description has evolved.

*QQ41. Are there any benefits from including predetermined fields in Table 3 of the CbC report template, in addition to those in this document?*

*Q42. 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?*

*Q43. 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?*

We do not have strong views in relation to these points other than to reiterate concerns about possible increase in the compliance burden which their inclusion might entail.