



28 August 2024

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Directorate-General for Taxation and Customs Union  
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### **Via Online Submission**

#### **RE: Draft Regulation for Public Country-by-Country Reporting**

Dear or Sir or Madam:

On 1 August 2024, the European Commission (“EC”) published a draft regulation (the “Regulation”) along with an accompanying annex (the “Annex”) regarding implementation of the EC’s requirement that certain companies make public selected information from their country-by-country reports (“Public CbCR”). The EC asked for feedback on the Regulation and Annex no later than 29 August 2024. On behalf of Tax Executives Institute, Inc. (“TEI”), I am pleased to respond to the EC’s request for feedback.

### **About TEI**

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 56 chapters in Europe, the Middle East & Africa (“EMEA”), North and South America, and Asia. TEI, as the preeminent association of in-house tax professionals worldwide, has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our over 6,000 individual members represent over 2,800 of the leading companies in the world.<sup>1</sup>

### **TEI Comments**

TEI’s feedback on tax policy initiatives by the OECD and the EU are driven by four main principles that should underly all tax policy around the world: clarity, consistency, predictability, and dispute resolution/avoidance. These principles translate into five objectives when applied to the Regulation and Annex.

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<sup>1</sup> TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6) of the U.S. Internal Revenue Code of 1986. TEI’s EC transparency register number is r 52413445902-12.

The five objectives are:

- Increasing tax certainty,
- Implementing multilaterally consistent tax rules,
- Simplifying tax compliance,
- Reducing the tax compliance burden, and
- Meaningful data transparency.

TEI trusts the comments below will help the EC to, collaboratively with the business community, work towards the effective adoption of a consistent Public CbCR enforced by local law.

#### Comments on the Regulation

##### *1. Clarifying the scope and purpose of information included in the Public CbCR*

By requiring companies to issue a Public CbCR, the “EU aims to enhance the transparency on corporate income tax paid by large companies, with a view to foster greater corporate accountability, enable better informed public debate and contribute to maintain trust in the fairness of national tax systems.”

The CbCR was first introduced as a non-public filing intended for use by government tax experts familiar with transfer pricing rules to further assess risks associated with intercompany transactions. Accordingly, the CbCR was intended to be used as a transfer pricing risk assessment tool by tax authorities and was never intended to be made public for general consumption. In other words, information in the CbCR was developed to provide additional insight to government tax experts and is likely to be confusing and open to misinterpretation by the general public who lack the expertise and training to draw informed conclusions for the information.

TEI recommends the Regulation specify that the Public CbCR was not designed to provide a complete and accurate representation of a multinational enterprise’s (“MNE”) overall operations and broader tax contribution. This would help ensure a meaningful and transparent interpretation of the Public CbCR data and prevent misunderstandings by the public. An MNE’s total tax contribution to a country includes more than just corporate income taxes. These taxes include employment taxes, which are linked to the number of jobs created by an MNE. Other taxes include consumption taxes, such as VAT, property taxes, environmental taxes, etc. None of these taxes would be reflected in the Public CbCR.

##### *2. Tax certainty about where Public CbCR information will be published*

TEI welcomes the Regulation’s clarification that it is not mandatory to file and publish the Public CbCR on any government registry, as there are many ways for the report to be misinterpreted without the necessary context. If the report is to be published, it should be on the MNE’s website to

ensure consistent information and messaging. Under this approach, a government's registry should only contain a link to the report. This is consistent with Article 48b(6) of Directive (EU) 2021/2101 amending Directive 2013/34/EU, which allows for publishing the Public CbCR information on the website of the ultimate parent entity ("UPE") if the UPE is not governed by the law of an European Union ("EU") Member State.

### *3. Consistency Across Member States*

Multilaterally implementing consistent tax rules geared towards simplifying tax compliance and reducing tax compliance burden is critical to the business community. We understand the Regulation would be a legally binding act of the EU and directly applicable to all Member States, akin to national legislation. Implementing regulations take precedence over national legislation in case the two contradict one another. TEI recommends the EC clarify that this Regulation will be the template that must be consistently implemented by all Member States without any deviation.

The above clarification is critical because many EU Member States have deviated from the EU Directive on Public Country by Country Reporting (Directive 2013/34/EU) resulting in potentially multiple formats of the Public CbCR. For example, Germany and France require it to be filed in the local language. Some countries have also not allowed for safe harbors in their local rules, and not all countries have used the 12 months after year-end deadline (e.g., Hungary and Spain). TEI recommends the Regulation apply to Member States (e.g., Romania and Croatia) that have implemented Public CbCR for financial years preceding 2025.

Clarification from the EU that the Regulation must be consistently implemented by all Member States without any deviation would eliminate these variances, subjecting MNEs to consistent rules. Complying with different versions of the Public CbCR across Member States would impose an unreasonable burden on the taxpayers. TEI encourages the EC to closely monitor the application of the Regulation in individual Member States and enforce consistent compliance.

Alternatively, MNEs should have the option to delegate one "master" EU company filing and select one Member State's Public CbCR filing according to that country's rules, especially if it will be accessible on the EU commercial register.

### *4. Consistency with OECD CbCR Requirements*

The information presented in the Public CbCR does not match the OECD CbCR Table 1 and Table 2 presentation. This mismatch will require additional (and essentially duplicative) effort by taxpayers to create a new version of the OECD CbCR. Around 22 out of the 27 EU member states are OECD members and are therefore well versed with the OECD CbCR format. TEI recommends the EC match the content and format with the OECD CbCR tables and so that taxpayers can submit their OECD CbCR tables for purposes of the Public CbCR without incurring an additional compliance burden.

### *5. EU Public CbCR XML Reporting*

TEI strongly recommends changing the EU Public CbCR format from XBRL to XML to be consistent with the OECD CbCR requirements. Without this change, taxpayers would need to engage new service providers to convert their existing XML and Excel data (on which the OECD CbCR XML files are based) into XBRL.

In most cases, this involves: (i) finding XBRL service providers; (ii) employing at least one member of the tax team who knows XBRL basics (as most in-house tax teams do not deal with XBRL for any other purpose); (iii) setting up new data extraction templates to satisfy service providers' data requirements; (iv) conducting new data extractions (or risky copy/paste exercises); (v) significant additional costs; (vi) the need to validate and adopt the XBRL file against the XBRL taxonomy even though the OECD XML file has been validated already; (vii) the risk of differences creeping into the CbCR numbers in the process; and (viii) an extra round of reviews and approvals of the XBRL file by taxpayer personnel who have already reviewed and approved the XML file containing the same data.

After all that, if as a final step taxpayers must upload their XBRL file to a government website, the same problems taxpayers face when getting their XML CbCR files accepted by the government's validating software will likely be repeated. In practice, it often takes taxpayers several days, if not weeks, including multiple emails back and forth with help desks and sometimes joint video conference calls, to get their existing CbCR XML files uploaded to government websites. The Public CbCR XBRL requirement will result in duplicating this entire process, to the detriment of both taxpayers and tax authorities. Moreover, this duplication will occur each time the Public CbCR must be filed, i.e., on an annual basis.

In contrast, filing the Public CbCR in XML will leave the existing Excel files and data extractions intact, and only require removing the Unrelated Revenues, Related Revenues, Stated Capital and Tangible Asset elements from the existing OECD CbCR XML file.

An MNE would also need to add Section 3 of the Public CbCR requirement to the OECD CbCR schema, but that needs to be done for both XML and XBRL files (and XML is the more appropriate language for such data in any case).

The EU easily can provide a standard XML parser to be used across countries, which will display the public CbCR data in one standard online format in the EU. See below as an example of an existing XML stylesheet used for the OECD CbCR schema.

CbCRMessage	
Sending Entity ID:	38420542
Transmitting Country:	DK
Receiving Country:	DK
Language:	EN
Warning:	
Content:	Cyprus de Bergepanc, Tax Director Global Transfer Pricing
NewMessageRefID:	DK2023-38420542-2024-08-211135223-Message01
OldMessageRefID:	
MessageType:	CBC701
Last day of reported period:	2023-12-31
Timestamp:	2024-08-211135223

ReportingEntity	
Reporting Entity Name:	Nordk Teas A/S
Reporting Entity TIN:	DK38420542
Name MNE Group:	Nordk Teas
Reporting Role:	CBC701
DocTypeLabel:	OECD1
DocRefID:	DK2023-38420542-2024-08-211135223-Report01

Country	UnReRevenue	ReRevenue	TotRevenue	EBT	TaxPaid	TaxAccrued	Capital	Earnings	FTEs	Assets	DocType	NewDocRefID	OldDocRefID
AU	DKK 17,061,100	166,650	17,227,750	2,380,250	854,450	714,150	1,986,450	4,341,200	34	2,700,550	OECD1	DK2023-38420542-2024-08-211135223-Neo01	
BE	DKK 15,114,550	32,456,450	47,571,000	2,872,550	232,650	867,400	3,800,500	25,314,600	472	35,488,950	OECD1	DK2023-38420542-2024-08-211135223-Neo02	
CA	DKK 10,829,850	10,829,850	4,009,700	1,066,050	1,098,550	7,494,600			76	2,686,950	OECD1	DK2023-38420542-2024-08-211135223-Neo03	
HR	DKK 900,550	11,300	911,850	108,700	15,700	21,900	1,000	535,300		124,050	OECD1	DK2023-38420542-2024-08-211135223-Neo04	
DK	DKK 48,258,350	43,850,850	92,109,200	12,136,900	1,844,650	2,173,050	15,996,950	522,956,750	444	35,139,150	OECD1	DK2023-38420542-2024-08-211135223-Neo05	
FO	DKK 119,640	15,391,200	15,510,850	2,766,500			13,534,750	7,992,500	944	24,106,750	OECD1	DK2023-38420542-2024-08-211135223-Neo06	
FR	DKK 61,568,650	7,192,150	68,760,800	3,572,550	-511,900	-50	90,700	2,223,200	93	293,250	OECD1	DK2023-38420542-2024-08-211135223-Neo07	
DE	DKK 82,033,900	685,050	82,718,950	84,000	35,300	46,905	193,100	587,600	79	5,563,100	OECD1	DK2023-38420542-2024-08-211135223-Neo08	
HN	DKK -18,900	10,773,200	10,754,300	1,900,200			967,300	26,956,650	522	9,206,800	OECD1	DK2023-38420542-2024-08-211135223-Neo09	
HK	DKK	97,300	97,300	4,250	400	350		27,250	1		OECD1	DK2023-38420542-2024-08-211135223-Neo10	
ID	DKK 199,350	4,045,500	4,204,850	59,450	161,950	171,250	727,600	757,950	403	1,812,250	OECD1	DK2023-38420542-2024-08-211135223-Neo11	
IT	DKK 191,900	1,352,200	1,541,100	63,450	48,700	17,700	211,600	-814,900	26	53,150	OECD1	DK2023-38420542-2024-08-211135223-Neo12	
NL	DKK 95,839,500	61,130,350	156,969,850	4,813,700	-298,350	209,900	7,035,600	114,798,900	330	41,312,250	OECD1	DK2023-38420542-2024-08-211135223-Neo13	
NZ	DKK 3,320,500		3,320,500	196,150	71,650	55,250	367,850	1,707,600	4	1,477,200	OECD1	DK2023-38420542-2024-08-211135223-Neo14	
NI	DKK 18,600	3,601,550	3,650,150	490,750			1,850	3,699,500	343	2,322,100	OECD1	DK2023-38420542-2024-08-211135223-Neo15	
SG	DKK										OECD1	DK2023-38420542-2024-08-211135223-Neo16	
NO	DKK	1,950	1,950	850,700	194,700	212,500	4,100	651,250			OECD1	DK2023-38420542-2024-08-211135223-Neo17	
PL	DKK 1,164,650	257,050	1,421,700	2,950	150	4,200	654,050	8			OECD1	DK2023-38420542-2024-08-211135223-Neo18	
PT	DKK 492,050	530,850	1,022,900	24,800	15,250	20,850	18,600	84,300	17	111,900	OECD1	DK2023-38420542-2024-08-211135223-Neo19	
SI	DKK 1,923,200	35,250	1,958,450	161,950	37,150	32,000	11,150	946,450	15	331,200	OECD1	DK2023-38420542-2024-08-211135223-Neo20	
ES	DKK 52,073,450	2,653,250	54,725,700	134,800		18,600	743,450	425,500	53	237,100	OECD1	DK2023-38420542-2024-08-211135223-Neo21	
SE	DKK			900	-2,750		1,950	5,450			OECD1	DK2023-38420542-2024-08-211135223-Neo22	
GB	DKK 12,334,900	52,850	12,387,750	2,397,400	470,600	475,600	7,609,550	1,799,550	33	799,250	OECD1	DK2023-38420542-2024-08-211135223-Neo23	
US	DKK 142,382,450	67,847,100	210,229,550	8,663,300	4,870,600	1,358,150	32,130,400	196,093,900	453	48,736,500	OECD1	DK2023-38420542-2024-08-211135223-Neo24	

Country	Name	Incorp	TIN	IN	Address Type	Address Free	Street	BuildingID	SuiteID	FloorID	District	POB	Post Code	City	Country Subentity
AU	TestCo Group Australia Pty Ltd		AU6468 2862		OECD301		Funview Drive	35		Level 1	Victoria		3153	Sevensby	
BE	Hobemian Teas N.V.		BEBE 04050 0282		OECD301		Kernedylaan	12 A					3561	Antwerp	
BE	TestCo Group Antwerp N.V.		BEBE 04042 10655		OECD301		Kernedylaan	12 A					3561	Antwerp	
BE	TestCo Group Gent N.V.		BEBE 04166 56612		OECD301		Kernedylaan	12 A					3561	Antwerp	

## 6. Inclusion of European Economic Area (“EEA”) Countries

Finally, it is our understanding that the Public CbCR requirement is applicable to the 27 EU Member States and EEA countries only and that the Public CbCR will contain the financial information from EEA countries called out separately just as are the Member States. TEI recommends that the EU clarify this.

### Comments on the Annex by Section

#### *Section 2: Overview of allocation of elements on a country-by-country basis*

The “Overview of allocation of elements on a country-by-country basis” table is consistent with the OECD CbCR requirements. The table is intended to contain the information on the entities in Member States broken down by the jurisdiction and all other entities aggregated together. TEI asks the EC to confirm that Member States include the EEA countries in addition to the 27 EU countries.

#### *Section 3: List of subsidiaries and activities*

The Annex provides that the “Section 2. List of subsidiaries and activities table column” entitled “Brief description of the nature of activities in the Member State” must be drawn from the information required by Annex I of Regulation (EC) No 1893/2006 of the European Parliament and of

the Council. The Annex also states that when information is drawn on the basis of Section III Part B and C of Annex III to the Council Directive 2011/16/EU, then the information can be drawn from the list that is consistent with the OECD CbCR requirements. TEI welcomes the dual optionality to report the nature of activities based on NACE codes (Regulation (EC) No 1893/2006) or the OECD CbCR codes.

The table in Section 3 is not presented in the same format as the OECD CbCR Table 2 and will therefore result in additional compliance activities for the taxpayers. TEI recommends that the table in Section 3 be designed such that it is exactly the same (content and format) as Table 2 in the OECD CbCR.

It is unclear if the information in Section 3 is only required for constituent entities based in EU Member State jurisdictions and not for constituent entities based in tax jurisdictions that are not Member States. We believe such information should only apply to the 27 EU member state countries and EEA countries. TEI recommends that all entities not located in Member States (including EEA countries) be excluded from Section 3 of the report.

*Section 5: (non mandatory) – Explanations for material discrepancies between income tax paid and accrued*

Section 5 permits taxpayers to provide an explanation of any material discrepancies between the amount of income tax accrued and the amount of tax paid on a cash basis at the group level. This is only marked as a non-mandatory field in the title of the section. Such information is not a requirement in the OECD CbCR guidelines and, as such, presents a deviation from the OECD rules. Thus, TEI recommends that the EC make clear this additional information is optional and providing it should be at an MNE's sole discretion.

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TEI appreciates the opportunity to comment on the Regulation and Annex. Should you have any questions regarding TEI's comments, please do not hesitate to contact Benjamin R. Shreck of TEI's Legal Staff, at [bshreck@tei.org](mailto:bshreck@tei.org) or + 1 202 464 8353.

Respectfully submitted,

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