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International Co-operation and Tax
Administration Division
Centre for Tax Policy and Administration
Organisation for Economic Co-Operation
and Development
Paris, France

Via email: taxpublicconsultation@oecd.org

RE: TEI Comments on Review of Country-by-Country Reporting

Dear Sir or Madam:

The Organisation for Economic Co-Operation and Development (OECD) launched its base erosion and profit shifting (BEPS) project in 2013. Action 13 of the BEPS project was entitled *Transfer Pricing Documentation and Country-by-Country Reporting* and the OECD published a final report under the action on 5 October 2015 (the Final Report). Because country-by-country (CbC) reporting was made a "minimum standard" under the BEPS project, all members of the OECD's Inclusive Framework on BEPS (the Inclusive Framework) are committed to implementing Action 13. The Final Report required a review of the CbC reporting minimum standard by the end of 2020. The OECD issued a public consultation document entitled *Review of Country-by-Country Reporting (BEPS Action 13)* on 6 February 2020 (the Consultation Document) pursuant to the Final Report's review requirement.

The Consultation Document invites interested parties to provide comments on the CbC reporting review no later than 18h00 (CET) on 6 March 2020. I am pleased to respond to the OECD's request for comments on behalf of Tax Executives Institute, Inc. (TEI).

TEI Background

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 57 chapters in Europe, North and South America, and Asia. As the preeminent association of in-house tax professionals worldwide, TEI 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 nearly 7,000 individual members represent over 2,800 of the leading companies in the world.[1]

TEI Comments

General Comments

TEI commends the work done by the OECD's Inclusive Framework on BEPS to put together the Consultation Document reviewing the CbC report and soliciting input from interested stakeholders. TEI is particularly suited to comment on the Consultation Document because many of our members work for companies subject to CbC reporting and are involved in preparing and/or overseeing the preparation of their employers' CbC reports.

TEI recommends, as a general matter, the CbC report remain in its current form to give tax authorities and taxpayers time to fully evaluate whether the current CbC report fulfills its function as a high-level risk assessment tool. Most tax authorities and taxpayers have not had the opportunity to assess the CbC report's efficacy as a risk assessment tool because the years in which taxpayers were required to file the CbC report are not yet under audit.

Further, the Consultation Document assumes changes to the data or format of the CbC report are easy for multinational enterprise (MNE) groups to implement. Certain data, on the contrary, is not always easy to obtain, particularly when the tax or accounting functions do not control the data. Adding to the data MNEs are required to report will likely require systems changes, which in turn involve design, testing and ongoing maintenance. Such systems changes will be duplicated for MNE groups without a single global enterprise resource planning (ERP) system (usually due to legacy systems and/or the result of mergers and acquisitions). The potential benefits of including additional CbC report data for high-level risk assessment purposes should be weighed against the added burden and costs imposed on taxpayers in the collection of such data, as well as the added burden on tax authorities who have to collect, handle, and use the additional information.

Comments Responding to Specific Questions Posed in the Consultation Document[2]

We set forth below our answers to the specific questions seeking input from interested stakeholders posed by the Consultation Document.

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[1] TEI is a corporation organized in the United States 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 (as amended).

[2] The italicized text and question numbers in this section correspond to the text and question numbers in the Consultation Document.

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

MNE groups have, unsurprisingly, had varied experiences with CbC reporting implementation, depending on the location of their headquarters jurisdiction and the countries in which the groups operate. Thus, implementation has been smooth and generally consistent with OECD reporting requirements for some MNE groups, while others have had some difficulties. One threshold complication is the lack of signed bilateral agreements among many jurisdictions and whether such agreements will be operative before CbC reporting deadlines. Multiple secondary filings with local jurisdictions can be required for MNE groups headquartered in a country without information exchange agreements with all the countries in which the groups operate because local jurisdictions are requiring such a filing in the absence of such an agreement.[3] A secondary local filing was not intended to be required where there is no current international agreement between the local jurisdiction and the jurisdiction of the ultimate parent entity (UPE), according to the Final Report.

Many jurisdictions, moreover, implemented CbC reporting without providing clarity around the technical reporting requirements and without providing guidance as to the specific submission process. This causes MNE groups and their advisors to devote unnecessary time and expense speculating on the technical requirements and submission process. Several countries, in addition, either do not follow the standard Extensible Markup Language (XML) schema, or have specific requirements regarding the CbC reporting information, which obviously requires MNE groups to expend additional time and resources satisfying such differing requirements.

TEI believes members of the Inclusive Framework (and other countries requiring CbC reporting) should accept the CbC report filed by MNE group's UPE in the UPE jurisdiction when a local filing is required. The OECD should require countries adopting the BEPS minimum standard going forward to make the standard effective for fiscal years following the calendar year in which complete filing guidance is issued by the adopting country (e.g., guidance issued at any point during 2020 would only become effective for fiscal year 2021).

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

Many taxpayers, unfortunately, have limited experience with respect to the use of CbC reports by tax authorities because their audits still relate to years before CbC reporting implementation.

The Consultation Document notes the OECD is currently developing a CbC reporting "Tax Risk Evaluation & Assessment Tool" (TREAT) to support tax authorities in reading and interpreting CbC reports. TEI recommends the OECD publish the TREAT to help MNEs in identifying indicators triggering questions from tax authorities (if the OECD is not otherwise planning on doing so).

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[3] This is a particular problem for MNE groups headquartered in the United States.

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

We agree with the Consultation Document's statement regarding the reduction in compliance costs for MNE groups produced via a single standardized master file, especially if a group can produce such a file to multiple jurisdictions. The master file also ensures different tax authorities receive consistent information. Some jurisdictions, however, differ from or go further than the requirements in Annex I of Chapter V (as noted in the Consultation Document). This requires MNE groups to supplement their overall master file or create a separate master file for each of these jurisdictions, increasing compliance costs. Inconsistent master file requirements mean producing different levels of information to different tax authorities. TEI recommends all additional local jurisdictional requirements be covered within the local file to achieve consistency and reduce taxpayer efforts involved in tracking unique local requirements for the master file. We note jurisdictions adopting additional master file requirements often add disclosures related to group transactions unrelated to the jurisdiction adopting the requirement and therefore the disclosures will not (and should not) be relevant to the risk assessment in such tax jurisdiction.

Jurisdictions also do not have consistent standards for requiring MNEs to provide the master file. Some jurisdictions, for example, require master file documentation even though the intercompany transaction is immaterial. This substantially increases compliance costs, particularly when the ultimate parent entity's tax authority does not require master file documentation. TEI recommends the OECD implement a *de minimis* threshold before master file documentation must be provided to tax authorities to reduce unnecessarily burdensome compliance costs.

Finally, we do not agree with the statement in paragraph 14 that the burden on MNE groups resulting from differing local file requirements across jurisdictions is less than that compared to differing master file requirements. Differing local file requirements, in form or in substance, create significant additional time, effort, and costs (including substantial fees paid to advisory firms), just as do differing master file requirements.

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

It would be beneficial for the OECD to clarify the definition of a Group to include a single entity conducting business through one or more permanent establishments, in light of some countries expanding their definition of taxability to include significant economic presence and the inconsistent adoption of the permanent establishment (PE) definition by countries under the OECD's model income tax treaty (or via the multilateral instrument developed under BEPS Action 15). The OECD should also confirm the definition of a Group does not include operations constituting a significant economic presence, but which do not give rise to a PE.

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

Branch financial statements are often prepared for the purpose of filing tax returns only and are not required for local or consolidated financial statements. Any reporting requirement should be minimal to avoid unnecessary compliance costs.

6. *Are there any benefits from requiring a CbC report to be filed by groups under the common control of an individual or individuals acting together, in addition to those described in this document?*

The primary objective here, as we understand it, is to ensure wealthy individuals and families holding business interests of a minimum size, either directly or indirectly, through non-corporate vehicles or investment entities are required to file a CbC report so tax authorities can use the report to perform high level transfer price risk assessments. Most tax authorities already know who these wealthy individuals and families are and can request they provide the information directly. Adding a requirement for such businesses to file a CbC report may inadvertently require an MNE to file multiple, differing CbC reports, which would only add complexity to the CbC reporting process. It does not make sense to add additional reporting requirements to address a narrow set of specific circumstances, in TEI's view. A benefit of the proposal, however, would be ensuring neutrality and consistency across groups of a certain size.

7. *Are there any practical challenges to MNE groups from requiring a CbC report to be filed by groups under the common control of an individual or individuals acting together, in addition to those described in this document?*

Information about who owns shares of a publicly traded entity is not always readily available (e.g., shares held through broker accounts or via different entities). Publicly traded entities should be exempt from any new CbC report involving common control of an individual or individuals acting together as most such entities are widely held. It is also extremely difficult for an individual to obtain information from entities if the individual does not have a majority interest in the entities.

8. *From the perspective of groups, what definition of control should be used to determine whether groups are under common control that would balance the dual aims of providing useful information to tax administrations while not placing an excessive burden on groups?*

Control should be defined as ownership of more than 50 percent of the voting power of an entity. Control definitions below 50 percent run the risk of groups being included in multiple MNE reporting groups and difficulty in obtaining the required information.

9. *From the perspective of groups, what proportion (e.g. one quarter, one third etc.) of the CbC reporting threshold could be used as a threshold, to require a CbC report to be prepared by groups under the common control of an individual or individuals acting together, that would*

balance the dual aims of providing useful information to tax administrations while not placing an excessive burden on smaller groups?

Lowering the reporting threshold could inadvertently require many small groups to produce CbC reports. It would be simpler for tax authorities to request the information from wealthy individuals and families directly than to change the CbC reporting requirements, as we note under Question 6. above.

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

No. TEI recommends the threshold remain the same for the following reasons:

- The Consultation Document notes the current threshold includes approximately 90 percent of corporate revenue. Reducing the threshold would therefore not significantly increase the percentage of corporate revenue covered.
- The Consultation Document also notes 85 to 90 percent of MNE groups do not have to file a CbC report under the current threshold. It is unclear whether tax authorities would have adequate resources to process and use the additional CbC reports filed under a lower threshold – why increase compliance burdens for taxpayers if the information submitted will not be used?
- It is unclear whether the CbC report has improved the effectiveness of tax audits because many MNE group audits relate to years prior to implementing the CbC reporting requirement.
- Under the "Pillar One" proposal of the OECD's digitalization of the economy project developed under BEPS Action 1, the shift to apportioning global profit based on certain factors appears to be moving away from the arm's length transfer pricing principle. Will transfer pricing still have the same importance or same level of risk as it does today if the OECD reaches consensus under Pillar One? If not, then it makes little sense to reduce the threshold.

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

Reducing the consolidated group revenue threshold would impose a significant resource burden on smaller MNE groups and likely would be disproportionate with the benefits accruing to tax authorities.

12. *Are there any benefits from each of the options for re-basing a non-EUR denominated threshold, in addition to those in this document?*[4]

Re-basing non-EUR denominated threshold at a specified set point (e.g., under Options 2, 3, and 4) ensures the threshold resets globally at a specified time. Such an approach would make it easier for tax authorities and MNE groups to keep track of the changes.

13. *Are there any practical challenges to MNE groups from each of the options for re-basing a non-EUR denominated threshold, in addition to those in this document?*

A practical issue noted in the Consultation Document is due to exchange rate fluctuation a resident UPE may fall in or out of scope for CbC reporting from year to year. The document should expand on how to address the situation especially when UPE falls out of scope. Would the subsidiaries of the MNE, for example, then have to file local CbC reports? Rebasing every year should be avoided, however, as it would create volatility and uncertainty. Options 5 and 6 would likely be very complicated. Option 4 makes more sense economically than Option 3.

14. *Option 3 and Option 4 refer to an agreed percentage movement in the value of 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 goals of consistency and comparability?*

The percentage should be set high enough so re-basing is not continuously being triggered and yet low enough to ensure comparability and to take into account countries with substantial foreign exchange rate fluctuation. In our view, around 20 percent would be the right percentage (and certainly not five percent).

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

To re-base all jurisdictions at a specified set point based on a specific date (for example, every 5 years at the beginning of January) to ensure all thresholds are reset globally at the same time. This would ensure comparability and consistency across jurisdictions. In addition, the three-year average preceding the introduction of CbC reporting in a new country could be used instead of only the year preceding introduction of CbC reporting.

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[4] Question 12 comes under section 7. Of the Consultation Document, entitled *Should a jurisdiction with a consolidated group revenue threshold denominated in a currency other than EUR be required or permitted to rebase its threshold periodically?*

16. *For each of the options for applying a threshold that takes into account consolidated group revenue of more than one fiscal year described in this note, are there any benefits, in addition to those in this document?*

If the OECD introduces re-basing the non-EUR denominated consolidated revenue threshold for requiring an MNE group to comply with CbC reporting, the MNE group may fall in or out of scope due to exchange rate fluctuations, as noted above. Basing the threshold for application of the CbC reporting requirements on consolidated group revenue for more than one fiscal year would reduce the possibility of MNE group falling in or out of the CbC reporting scope from year to year. Three years would be consistent with other approaches used for transfer pricing purposes, such as benchmarking studies. Voluntary filing should be permitted if an MNE expects it will only temporarily fall below the threshold.

17. *For each of the options for applying a threshold that takes into account consolidated group revenue of more than one fiscal year, are there any practical challenges to MNE groups, in addition to those in this document?*

An MNE group may be required to continue filing a CbC report even after a substantial change in business operations under Option 2. For example, assume in Years 1 and 2 the MNE group meets the threshold. Suppose at the beginning of Year 3 it sells one of its business units, reducing the MNE group's consolidated revenue in Year 3 to 50 percent of Year 2 revenue, which no longer meets the CbC reporting revenue threshold. Finally, assume Year 4 revenue is the same as Year 3. Absent Option 2, the MNE group could have stopped CbC reporting after Year 3 but it is required to report in Year 4 because in two out of the four years, the MNE group met the CbC reporting revenue threshold.

18. *Are there any other changes to the operation of the consolidated group revenue threshold which should be considered, in addition to those in this document?*

Additional guidance on what constitutes "revenue" would be helpful, including examples.

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

The requirement to include extraordinary income would likely increase comparability between MNE group financial statements prepared under differing accounting standards because accounting standards are inconsistent (as noted in the Consultation Document).

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

The definition of extraordinary items varies across countries local accounting standards. Controversies may therefore arise in jurisdictions where a local secondary filing is required if they have a narrow definition of extraordinary items.

If extraordinary items are included, it would be helpful to further provide clarity on the definition of "extraordinary income" with respect to the €750 million threshold for consolidated group revenue.

For this calculation is the "income" amount the "proceeds" or is it the "gain"? This was clarified in the *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action13* issued April 2017 for the revenue column of the CbC report but perhaps it should also be clarified with respect to the threshold.

Some accounting standards, moreover, eliminated the concept of extraordinary income to reduce the cost and complexity of preparing financial statements. This removed the need for auditors to identify whether an event was rare enough to constitute an extraordinary item. MNE groups operating under accounting standards requiring them to include extraordinary income in consolidated group revenue would need to change their systems and processes to exclude such income, increasing compliance costs for those groups. Further, accounting for extraordinary income and its relevant treatment for tax purposes can lead to disputes between taxpayers and tax authorities regarding whether the income qualifies as an extraordinary item. Finally, the Consultation Document does not address how extraordinary losses should be treated. Should such losses also be excluded from consolidated group revenue?

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

Either approach can be supported by a compelling rationale, which would result in MNE winners and losers depending on the approach adopted. Thus, TEI cannot recommend one approach over another. Whatever approach the OECD agrees to, however, the final guidance should recommend model transition disclosures for financial accounting purposes to enable comparability between years for MNE groups changing from one approach to another. Excluding extraordinary items from consolidated group revenue (if presented separately in the group's financial statements) would be sensible as a single year event is not an indicator of greater transfer pricing risk.

22. *Are there any benefits from including gains from investment activity in an MNE group's consolidated financial statements, in addition to those in this document?*

A requirement to include such gains will increase comparability between MNE groups using different accounting standards because accounting standards are inconsistent (as the Consultation Document notes).

23. *Are there any practical challenges to MNE groups from including gains from investment activity in an MNE group's consolidated group revenue, in addition to those in this document?*

Final revised OECD guidance regarding CbC reporting requirements should provide additional details on how to treat intercompany gains from investment activity. Consolidated group revenue for accounting purposes eliminates all intercompany revenue (including intercompany interest, dividends,

etc.); therefore, the information would often have to be gathered from local financial statements which may be prepared under local generally accepted accounting principles (GAAP) rather than the GAAP used by the ultimate parent of the MNE group for consolidation. Furthermore, the inclusion of intercompany investment income in a multi-tiered ownership structure can substantially inflate consolidated group revenue and operating income. As an example, assume UPE owns 100% of Sub1, who owns 100% of Sub2, who owns 100% of Sub3. Sub3 pays a $100 dividend to Sub2, who pays $75 dividend (assume 25% tax paid on the dividend from Sub3) to Sub1, who pays $56.25 (25% tax paid on dividend from Sub2) dividend to UPE. Under CbC reporting, the consolidated group revenue and operating income (assuming no other expense) reported would be $231.25 ($100 + $75 + $56.25), even though the amount of cash moved up the chain is far less.

Further, including gains from investments in revenues on the CbC report may not make sense economically for MNE groups when their primary business is not to make investments for the purpose of realizing gains but is to operate assets acquired or keep and integrate acquired companies. In such situations, gains from investments should be excluded from revenues.

We agree with the comment in Paragraph 72 if a high level of investment income in one year would cause a group to exceed the revenue threshold for such year, an adjustment would be required.

Financial services institutions' revenue reported on Table 1 generally includes interest revenue on a net basis (interest income less interest expense). There may be situations where Total Revenue, Unrelated party revenue, or Related party revenue is negative for a legal entity when interest expense exceeds interest income. Consequently, this in turn may produce negative revenue amounts for a Jurisdiction on Table 1. Currently taxpayers are not allowed to include negative revenue on Table 1 and therefore any negative amounts would need to be adjusted to zero. This may result in inaccurate Table 1 data. Other columns within Table 1 do not, however, have this constraint (e.g., accumulated earnings).

24. *From the perspective of MNE groups, which approach to this issue (e.g. including gains from investment activity in consolidated group revenue if these items are separately presented in the consolidated group statements; excluding gains from investment activity from consolidated group revenue if these items are separately presented in the consolidated group statements; or some other approach) would balance the dual aims of relative simplicity and a consistent treatment of MNE groups preparing consolidated financial statements under different accounting standards?*

See our answers to Questions 21 and 23.

25. *Where the preceding fiscal year is less or more than 12 months, are there any benefits from a jurisdiction requiring an adjustment to (a) consolidated group revenue of the preceding fiscal year or (b) the consolidated group revenue threshold, in determining whether an MNE group*

is an excluded MNE group, in addition to those in this document? Otherwise, it would appear a jurisdiction could take either approach.

Adjusting the consolidated group revenue threshold to match the number of months included in the consolidated group revenue would be simpler than having to adjust the actual consolidated group revenue of the preceding fiscal year. We agree an adjustment is needed to ensure consistency and neutrality across MNE groups, as well as to achieve the goals of CbC reporting.

26. *Are there any practical challenges to MNE groups in applying the consolidated group threshold as described in this document, in cases where the preceding fiscal year is less or more than 12 months, in addition to those in this document?*

MNE groups involved in mergers, acquisitions and divestitures or in reorganizations may have constituent entities with fewer or greater than 12 months. One of the options previously available was for the MNE to use the actual revenue, operating income, etc., of the MNE group's constituent entity for the short or long accounting period. Requiring extrapolation to a 12 month period should only apply when the MNE group in total does not have a 12 month fiscal year and not to entities acquired by the MNE group with a short or long year as a result of the acquisition, as this would be extremely burdensome because it would require manual adjustments.

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

Tax authorities are meant to use CbC reports to assess high level transfer pricing and other BEPS risks, not to replace detailed transfer pricing analyses on audit, which would be a concern if constituent entity data was included in the CbC report. Reporting the information in Table 1 on a constituent entity basis is more information than needed to conduct such risk assessment. MNE groups will need to undertake systems and process changes to switch from providing information on a tax jurisdiction basis to constituent entity basis. TEI does not support presenting information in Table 1 at the legal entity level and agree with the challenges described in the Consultation Document.

The benefits listed in the Consultation Document, moreover, are not obvious. Based on the first years of experience of some of our members, it does not appear tax authorities have used the information they have obtained through UPE filing, local secondary filing, or automatic exchange. The benefits, if any, would only be obtained by the tax authorities when they have the systems capability to turn the CbC data into information, which does not seem to currently be the case in many jurisdictions. It therefore makes little sense to add additional information to the CbC report.

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

MNE groups may not be required to prepare separate entity financial statements (as noted in the Consultation Document). Therefore, additional costs/resources would have to be incurred by an MNE to change its systems and processes to gather the information required by Table 1 on a constituent entity

basis. The amount of data to report would increase significantly for groups with many constituent entities in a single jurisdiction. This could be overwhelming for taxpayers and tax authorities, especially when the data differs from local tax returns. Other practical difficulties may arise, such as the allocation of paid and accrued taxes to entities in countries where an MNE files a consolidated return. In addition to gathering the data, the time involved in then interpreting the transfer pricing risk based on ratios of Table 1 at an entity level would require a substantial amount of effort for both taxpayers and tax authorities.

Finally, disclosure on a constituent entity basis may create competitive issues as competitors are able to access more detailed information for each of the MNE's businesses if some jurisdictions (e.g., the European Union) require public disclosure of CbC reports in the future. Along these lines, we understand one of the key findings from the September 2019 OECD peer review on CbC reporting, there are jurisdictions not satisfying the security standards performed by the Global Forum on Transparency and Exchange of Information's assessment on confidentiality.

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

Such an approach may allow tax authorities to obtain a more accurate picture of the MNE group's results in a jurisdiction (as noted in the Consultation Document). MNEs, however, generally only set up separate entities in a single jurisdiction where their operations involve different businesses due to the compliance costs; therefore, filing consolidated data in a jurisdiction may not provide a more accurate picture of an MNE's operations and income as the results of the differing business operations would be combined. Moreover, consolidated data may not provide a more accurate picture of an MNE's operations where an MNE group has significant intercompany transactions in the same country but each entity is in a different taxing region. TEI agrees with the challenges described in the Consultation Document and for those and other reasons we do not support presenting information on a consolidated basis and recommend retaining the aggregate data approach.

We agree with the Consultation Document's statement that aggregated data in Table 1 can result in multiple inclusions of the same data (e.g., revenues), or distortions (e.g., stated capital).

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

Filing aggregated data would be less burdensome than consolidated data where intercompany transactions within a jurisdiction are eliminated but not intercompany transactions between jurisdictions because most MNEs' accounting and/or tax reporting requirements do not require intercompany transaction (revenue, expense, and profits) tracking and elimination on a jurisdiction by jurisdiction basis (as the Consultation Document notes). Distinguishing related party transactions between constituent entities in the same versus different jurisdictions is not straightforward and companies will need systems and processes to be able to accomplish this.

Even if this could be done readily, companies do not have the capability to trace and eliminate the impact of domestic to domestic transactions through equity (capital and retained earnings). If the consolidated approach is applied to related party revenues and profit before income tax, for example, how would this be reflected for purposes of disclosure of accumulated earnings? Tracking historical adjustments just for domestic related party transactions would be very challenging and extremely burdensome. To the best of our knowledge there are no existing solutions in place for such an approach. Moreover, how does the proposal apply to stated capital? Complexities applicable to stated capital include: What will be the rules for equity pickups for lower tier companies? What will be the rules for commonly controlled transactions?

Requiring consolidated data in Table 1 will be a huge challenge for many MNE groups. Many MNEs do not prepare per-country consolidated financial statements because:

- Country consolidated statements are not required by U.S. GAAP or other accounting standards applicable to the UPE which produces worldwide consolidated statements.
- The vast majority of local country accounting rules do not require country consolidated statements when the MNE prepares and files consolidated statements at a higher level, and the entities located in the local countries are included in such consolidated statements.
- In the rare instances where local countries require consolidated statements at the country level (e.g., Germany), such local consolidated statements are prepared locally, and not shared with the UPE and the process is often labor intensive. It would therefore be impossible to replicate a similar process in many countries.
- Implementing country consolidated statements globally would require significant efforts, resources, and time, and would be very costly, even for MNEs operating global enterprise resource planning (ERP) software. Such efforts and costs would be even greater for MNE with a large number of entities on local or regional legacy systems.

Country consolidated data should therefore not be required as the benefits for tax authorities would be disproportionate with the costs imposed on MNE groups. Instead, tax authorities, which already have the tax returns filed by all constituent entities in their countries, should send questions to constituent entities on an as-needed basis.

31. *For each of the possible new items of information considered in this section, are there any benefits from including an additional column in Table 1 of the CbC report template, in addition to those in this document?*

TEI recommends the OECD postpone any additional requests for more detailed breakdown of related party interest, royalty, service, etc., income and expenses, research and development expenses

and deferred taxes until the OECD and tax authorities can determine whether the efficacy of the current CbC reporting information in conducting high level transfer pricing risk assessments. MNEs already incur substantial costs to comply with CbC reporting requirements and increasing the information collection burden before assessing the usefulness of the currently collected information is premature. TEI therefore does not believe the additional column should be added and we agree with the challenges described in the Consultation Document.

The OECD should at least set a reasonable materiality threshold before it requires additional detailed disclosures in particular categories. That is, only if the amount for a particular category is above the threshold would additional disclosure be necessary.[5]

32. *For each of the possible new items of information considered in this section, are there any practical challenges or other concerns to MNE groups from including an additional column in Table 1 of the CbC report template, in addition to those in this document?*

Tax authorities already have tax returns filed by constituent entities in their countries and other transfer pricing documentation (including the local file) or special reports on intra-group transactions required by many jurisdictions. Tax authorities therefore have all or almost all the items considered in this section (e.g. related party interest income and expense, royalty income and expense, service income and expense, and research and development expenditure). Furthermore, some of the information requested can have competitive and security sensitivities (e.g., research and development expenses by location). Requiring MNE groups to report these items in their CbC report would be a duplication of efforts with little value added. Deferred taxes seem particularly useless to tax authorities in practice.

Items currently included in the CbC report seem sufficient for Tax Authorities to conduct a high-level risk assessment and determine whether a follow up inquiry or an audit is required, especially in combination with the data reported on tax returns and already in possession of tax authorities.

While it may be possible for MNEs to identify and separately report further details related to related party revenues and expenses, the costs of complying with the request and building the systems to reliably and accurately capture the information may not be trivial. The reasons provided in the original public consultation on CbC reporting remain applicable.

Not all MNEs compute and disclose research and development expenditures for financial statement purposes. Aside from significant resource and systems changes, it is not certain whether this proposal is viable at the country level for CbC reporting purposes. Similarly, not all filers may be reporting financial information under a regime where deferred tax accounting is required. Taxpayers already expend significant effort to segregate adjustments related to prior periods from current expense. Doing so for deferred taxes will be challenging and may require significantly more resources to do (e.g.,

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[5] For example, assume an MNE operating in Countries A, B, and C, with related party interest of $10 million in Country A, $1 million in Country B, and $0.5 million in Country C. If a detailed breakdown is only required for related party interest in amounts $10 million or greater, then the MNE would only have to provide such a breakdown for Country A.

tax provision computations just to support a CbC view of tax expense). Further, segregating the downstream effects of income tax reserves (excluded from current tax expense) from deferred taxes should be further analyzed.

Also see our answer to Question 31.

33. If any of the possible new items considered in this section were added to Table 1 of the CbC report template, what additional instructions or guidance would be helpful to MNE groups?

Additional guidance will be needed with respect to disclosure of deferred taxes. Are all deferred taxes to be included or only deferred taxes relating to certain items (e.g., net operating losses)? How should MNE groups address changes in assumptions and tax rates impacting deferred taxes? Would additional disclosures be required? We recommend none of the new items be included in Table 1 in any event.

Paragraphs 113 and 119 refer to changes to the nomenclature on the CbC report from related party items "received" to related party "income" and related party items "paid" to related party "expenses," respectively. It is critical to ensure the CbC report, master file, and local file use identical concepts and definitions. Because local files and tax returns may use local statutory data, while the CbC report and master file include group GAAP accounting data, there is still room for disconnects between the three documents, which requires additional efforts by taxpayers to provide explanations to bridge the information differences between the CbC report and the local file.

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

No.

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

The approaches do not address the current reporting challenge of double counting (or more) of income of tax transparent entities (and potentially their constituent entities). Transparent entities do not represent BEPS risks because taxes are ultimately paid by constituent entities. TEI recommends the OECD consider removing tax transparent entities from the CbC report where the entities' income is included in other constituent entities, instead of requiring additional disclosures. This will reduce MNE group compliance costs as well as make it easier for tax authorities to understand information in the CbC reports because there will no longer be double (or more) counting.

Identifying and/or categorizing constituent entities non-resident in any jurisdiction in accordance with approaches 1, 2 and 3 and reporting them separately in Table 2 should not cause any significant difficulty. However, separate data should not be reported in Table 1 for these entities. It would create a difference of treatment with other constituent entities which would make the preparation of the CbC report more complicated and increase the compliance efforts and costs. Tax authorities could use Table 2 information and ask questions on an as-needed basis.

For similar reasons, approach 4 should be avoided. Contrary to the statement in paragraph 162, not treating all categories of constituent entities in a consistent manner would increase the risk of errors and the compliance burden.

36. Are there any benefits from including additional information required in the CbCR XML schema in the CbC report template, in addition to those in this document?

No. We agree the addition of Taxpayer Identification Numbers (TIN) as information needed for effective exchange of information between tax authorities. Note UPE's in the United States, the U.S. Form 8975 (CbCR) already includes the taxpayer's TIN. If local jurisdictions decide to deviate from the OECD template/XML schema and require additional fields (e.g., addresses), it should not be incorporated into the OECD template.

Currently, the CbC XML Schema requires TINs to be input into the Cbc report. The TIN field is not on the Action 13 CbC Template. This is an acceptable addition to the CbC template as it is a required field for the CbC report to be filed using the OECD CBC XML Schema. Addresses, however, are not a mandatory field, but optional in the CbC XML Schema, as in U.S. Form 8975. Paragraph 168 of the Consultation Document states "CbC reports must be exchanged using the CbCR XML Schema. This requires formation on the address and TIN of constituent entities to be included." This is not accurate as the CbC XML schema does not require addresses as it is considered an optional input.[6]

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

No. For the information noted in the Consultation Document (i.e., tax identification number and addresses). However, the OECD should note if the CbC reporting XML schema adds additional information in the future such information may not always be readily available and it would take time for MNE groups to obtain and report the additional information required.

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

No. We do not recommend modifying the current disclosure of business activities.

39. Are there any practical challenges or other concerns to MNE groups from including standardised industry codes in the CbC report template, in addition to those in this document?

Yes. There are multiple industry codes standards across regions, as highlighted in paragraph 176. Such codes are used locally for different purposes and constituent entities in different countries use different standards. One single standard would have to be adopted across the entire MNE group, which would also require systems changes to maintain this new master data element. This type of information

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[6] *See* p.13 of the OECD CbC XML User Guide. Some countries do, however, require the inclusion of addresses and other information.

is generally not controlled by the tax or accounting function, which is responsible for the CbC report, and may not be readily available. Challenges to obtain the information for CbC reporting purposes will be greater for MNE groups with more than one ERP system (which is likely the case for the majority of MNEs for historical legacy reasons and/or due to acquisitions).

Finally, constituent entities are often engaged in multiple activities and would be forced to choose one primary activity so it can determine the standardized industry code (as noted in the Consultation Document).

40. From the perspective of MNE groups which of the existing industry code standards is most likely to be the least burdensome and most useful in providing information on the activities of constituent entities?

For MNE groups with constituent entities in multiple regions, no industry code standard would be less burdensome than any other because systems changes would be required for any MNE group who must change its industry codes. The current categorization in Table 2 seems sufficient to provide tax authorities with the information they need, especially considering the lack of feedback or questions on CbC reports filed for 2016, 2017 and 2018. Tax Authorities should use existing information contained in the current CbC report rather than ask for more information they may not use.

The MNE group should be able to choose the industry code standard most relevant to it and not be forced to use one standard, should this information be required in a future version of the CbC report. MNE Groups will use appropriate SIC/NAICS/NACE codes when conducting transfer pricing analyses, which are usually disclosed in the relevant transfer pricing studies. The use of the codes as contained within a transfer pricing analysis is a better and more accurate analysis of the underlying intercompany activity,rather than an overall comparison of a constituent entity with other entities having the same standard industry code.

Further, industry codes can be erroneous or unreliable because the parent company industry code is often used by, or assigned to, its subsidiaries irrespective of the subsidiary's actual activity. The purpose of the CbC report is to enable tax authorities to conduct high-level risk assessment, not to conduct a benchmark study. Thus, the identification of the main activities of constituent entities as currently reported seems more appropriate and reliable.

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

No. The OECD should not add predetermined fields to Table 3.

The introduction of predetermined fields, as stated in Paragraph 182, "would reduce the need for an MNE group to prepare a comprehensive text . . . ." We disagree with this statement because a "comprehensive text" is not required to be generated annually. In fact, for consistency, a taxpayer's general end notes are standardized and usually carryover from year-to-year.

42. *Are there any practical challenges or other concerns to MNE groups from including predetermined fields in Table 3 of the CbC report template, in addition to those in this document?*

Changing the format from free text to pre-populated fields will require MNEs to incur additional compliance costs, especially for MNE entities with automated CbC reporting. Further, given the diversity of industries involved, what is relevant for one industry may not be relevant for another. Several proposed fields listed in the table on pages 65-67 are duplicative and would increase compliance costs, contravening the goal of keeping a reasonable balance between compliance costs and the CbC report's objectives.

43. *From the perspective of MNE groups, what predetermined fields could be included in Table 3 that would provide useful information to a tax administration in interpreting a CbC report, while not being burdensome for an MNE group?*

Because most MNE groups required to file CbC reports have full-time tax authority staff onsite, the tax authorities are very familiar with such groups and can easily request any additional information; therefore, there is no need to expand Table 3.

That said, we have the following specific comments on the potential predetermined fields listed on pages 65-67 of the Consultation Document:

Field 1 – Applicable accounting standards used for determining constituent entities: The choices here are adequate.

Field 2 – Source of date: The choices here are too limited/rigid, it would be better to use a free text field.

Field 3- a material acquisition, disposal or restructuring of constituent entities has occurred during the reporting year: This information is already reported in the master and/or local file.

Field 4 – Table 1 includes information constituent entities included in consolidated financial statements using proportionate consolidation rules: Current requirement to use free text achieves the same result.

Field 5 – Where proportionate consolidation rules have been applied, the number of employees of the relevant constituent entity are reported on a pro-rata basis: We do not see any value to this field.

Field 6 – Income tax refunds have been included in revenues rather than income tax paid (cash basis), as permitted under the applicable accounting standards: It would be better to clarify the definition of revenues in a prescriptive manner and exclude tax refunds from revenues (it would be reflected as a reduction of cash taxes).

Field 7 – Accumulated earnings includes negative accumulated earnings (i.e., accumulated losses) for some constituent entities: Noting this information is fine, but if Table 1 is changed to report information by entity this item will be irrelevant.

Field 8 – Does Table 1 contain information prepared on a consolidated tax jurisdiction-wide basis? This is adequate but it is not much different from using free text.

Field 9 – Was the UPE a constituent entity in another MNE group in the preceding fiscal year? This is adequate.

Field 10 – Is the UPE exempt from tax in its tax jurisdiction of residence? This is adequate.

Field 11 – Is the UPE a not for profit entity? This is adequate.

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TEI appreciates the opportunity to comment on the Consultation Document reviewing the CbC reporting minimum standard under BEPS Action 13. TEI's comments were prepared under the aegis of its European Direct Tax Committee, whose chair is Kris Bodson. Should you have any questions about our comments, please contact Ms. Bodson at +32 2 746 36 01 or kbodson@its.jnj.com or Benjamin R. Shreck of TEI's legal staff at +1 202 464 8353 or bshreck@tei.org.

Respectfully submitted,
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