

# Country by Country Reporting

## A survey of FTSE100 companies' views

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**Author:**

Joseph Stead

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Christian Aid is a Christian organisation that insists the world can and must be swiftly changed to one where everyone can live a full life, free from poverty.

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**[christianaid.org.uk](http://christianaid.org.uk)**

## Contact us

Christian Aid  
35 Lower Marsh  
Waterloo  
London  
SE1 7RL  
T: +44 (0) 20 7620 4444  
E: [info@christian-aid.org](mailto:info@christian-aid.org)  
W: [christianaid.org.uk](http://christianaid.org.uk)

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## List of acronyms

|              |                                                           |
|--------------|-----------------------------------------------------------|
| <b>ALP</b>   | Arm's Length Principle                                    |
| <b>BEPS</b>  | Base Erosion and Profit Shifting                          |
| <b>CBC</b>   | Country by country                                        |
| <b>CBCR</b>  | Country by country reporting                              |
| <b>CRDIV</b> | Capital Requirements Directive IV                         |
| <b>MNC</b>   | Multinational corporation                                 |
| <b>OECD</b>  | Organisation for Economic<br>Co-operation and Development |
| <b>REIT</b>  | Real Estate Investment Trust                              |

## Executive summary

Christian Aid has called for public country by country reporting (CBCR) since 2008 (others have done so for even longer). We have campaigned for multinational corporations (MNCs) to make public basic information about their finances and operations (profits, revenues, taxes paid, employees etc<sup>1</sup>) separately for each country in which they have operations.

We believe that such reporting has various benefits.<sup>2</sup> These include helping governments (especially those in developing countries), investors and the public to identify the risk that a particular company is dodging tax. In addition, CBCR supports the monitoring and accountability of both companies and government.

Over the past seven years, support for public CBCR has grown, with the supportive voices stretching far beyond civil society to the European Parliament,<sup>3</sup> the UK Parliament's International Development Committee,<sup>4</sup> investors,<sup>5</sup> and the High Level Panel on Illicit Financial Flows from Africa.<sup>6</sup> Support has also remained strong among the public.<sup>7</sup>

In addition to this backing, there have been some significant policy developments. Some companies have voluntarily committed to providing CBCR<sup>8</sup> (often as part of third party accreditation, such as the Fair Tax Mark<sup>9</sup>). Laws requiring extractive companies to reveal their payments to government on a country-by-country basis have been passed and are being implemented in many countries.<sup>10</sup> In the EU, major financial institutions are required by law to provide public CBCR on their turnover, profits, number of employees, state subsidies received and taxes paid,<sup>11</sup> the first reports of which have already been published.

Most recently as part of the BEPS Action Plan, the OECD and G20 have recommended that MNCs with a global turnover of more than €750m prepare a standardised CBC report and submit it to the tax authorities in the country where they are headquartered. But significantly, no information will be made public under this development<sup>12</sup>. Instead, CBC reports will be submitted only to the tax

authorities where the MNCs are headquartered and then shared between countries via treaty obligations. This means that most developing countries, which lack comprehensive treaty networks, will be denied access to CBC reports,<sup>13</sup> while governments will face unnecessary costs in transmitting the reports to other authorities.<sup>14</sup> Several jurisdictions (e.g. Ireland<sup>15</sup>) have committed to introducing this requirement; the UK and Spain have already passed legislation to enable regulations to this end.<sup>16</sup>

Requirements for companies to report their payments to government on a country-by-country basis are now a reality for some sectors, while non-public CBCR is shortly to become a reality for many more companies. The question of public CBCR remains high on the political agenda in many countries and the EU is actively discussing legislation in the Shareholder Rights Directive. The European Commission is conducting an impact assessment and the current UK government's pre-election manifesto committed it to 'consider the case for making the information available on a multilateral basis'.<sup>17</sup>

Against this background, Christian Aid thought it useful to survey the FTSE100 companies (the 100 biggest companies on the London Stock Exchange), to gauge leading companies' views on CBCR and better understand their concerns. In addition, we have looked at responses to the OECD's consultation on CBCR, undertaken as part of the BEPS Action Plan.<sup>18</sup>

Both sets of responses make for interesting reading. As we shall see from FTSE100 companies' replies to our survey, only a handful say that they object outright to the idea of making CBC reports public. While only a similar handful are willing voluntarily to publish CBC reports of their own, many state that they would be willing to comply with legislation requiring them to disclose their CBC reports. The low level of outright objection suggests that public CBCR can be made a reality without significant resistance. This is a significant finding that should embolden legislators.

This finding is further borne out by looking at the responses to the OECD consultation. While the

responses to it suggest a greater degree of concern about sensitive information being revealed by new reporting requirements, a detailed look at the objections suggests that they refer to information not in CBC reports or have little substance and certainly none that cannot be resolved.

KPMG's Europe, Middle East and Africa Head of Tax, Jane McCormick, has said recently that public CBCR is inevitable,<sup>19</sup> and our survey appears to support that assessment.

We would further add that if it's just a matter of time, then there's no time like the present.

## The Christian Aid FTSE100 survey

We wrote (by post and, where necessary, email) to all companies in the FTSE100, asking four questions about CBCR:

1. Given that there will soon be a legal requirement to compile CBC reports for HMRC, is your company willing to make that information public? If not, why not?
2. If not willing to make the whole CBC report public, would your company be willing to make part of it public? If so, which parts, and why should other parts be kept private?
3. Would you object to a UK/EU law requiring all major companies to publish CBC reports?
4. If unwilling to make your company's CBC report public, how should it be treated and shared by tax authorities?

### The results

To date, we have received 54<sup>20</sup> responses. Most responses were in the form of general statements, but it was possible to identify general trends in response to questions 1 and 3.

The table below shows the types of answer that we received in response to question 1 about companies' willingness voluntarily to make public the CBC reports that they will have to prepare for the UK tax authority.

| Answer                                                                                                                  | No. of companies | %  |
|-------------------------------------------------------------------------------------------------------------------------|------------------|----|
| <b>Is your company willing voluntarily to publish the country by country reports it will make to the UK government?</b> |                  |    |
| Already does, is planning to or is willing voluntarily to disclose                                                      | 3                | 6  |
| Considering further voluntary disclosure                                                                                | 8                | 15 |
| Existing laws/practice provide equivalent level of disclosure/sufficient disclosure for all stakeholders                | 9                | 17 |
| Unwilling voluntarily to disclose                                                                                       | 9                | 17 |
| Did not respond to the question                                                                                         | 25               | 46 |

Such a quantitative analysis does not, however, convey the full range of opinions, nor does it communicate companies' explanations of how they reached their conclusions. We would have liked to have been able to publish all the responses we received from companies. However, many companies requested that their comments remain anonymous. As a result, we seek to summarise the range of views using anonymised quotes below.

Those companies that had already disclosed information voluntarily, or were planning to do so, stressed that such disclosures would improve the information available to the public. Comments included: 'We increased the amount, and clarity, of information about our tax affairs which is in the public domain' and 'such disclosures will provide confirmation to stakeholders that the vast majority of the



group's activity is based in the UK and that we pay tax in the jurisdictions in which we operate'.

By contrast, others felt that existing requirements were sufficient. One respondent stated: 'We consider that we already provide sufficient information to allow readers of the Group's public financial information to make informed judgements about the performance and position of the Group's operations in and outside of the UK.' Another said: 'We have no current plans to publish additional information such as country by country reporting publicly, because we consider we already provide clear information in our annual accounts.'

Perhaps the difference of opinion is a result of differing perspectives regarding the perceived audience. It is notable that whereas those in favour of voluntary publication talked of the benefits of information being in the 'public domain', those who were more opposed drew the audience more narrowly and did not consider tax to be a matter of public debate at all: 'We do not necessarily think, in our case, that there would be much benefit either to HMRC or our shareholders, from country by country reporting,' one respondent stated.

Some companies did realise the audience would include the public, though not as stakeholders, and were concerned about the reaction: 'For large and complex multinationals...publishing a prescribed set of numbers by country will inevitably need detailed clarification and will clearly have the potential for conclusions to be drawn by readers that are simply wrong. As such, I see no benefit to the group or our stakeholders in publishing CBCR data voluntarily.'

The final theme of objection to voluntary disclosure centred on commercial disadvantage. For example: 'Given that public disclosure of such reporting is not currently required under international standards or UK regulation, I think you would agree that to publish such data before it is required of all companies would place us...at a commercial disadvantage'.

Commercial concerns also featured in some of the comments made by companies considering voluntary disclosure. One stated: 'Once we have implemented the processes and collected the data for the first applicable year, we will review it for commercial sensitivity and then make a decision in relation to broader publication.'

This desire to see what the CBC reports looked like before agreeing to publish voluntarily was widespread. For example: 'Once the format of this reporting is finalised, we shall consider whether, and to what extent, that information may be helpful or useful to disclose to shareholders and, if so, how best to do so.' One respondent concluded: 'We would not expect to make a decision as to whether or not to make any of the detail publicly available until there is some experience with the report and we can assess whether or not it provides meaningful, coherent information which is likely to be of use to our stakeholders in general.'

Perhaps the most interesting responses to this question were those that saw voluntary disclosure as second best to legislation. For example: 'If neither of these initiatives [for legislation] progress, then we can see there may be value in agreeing some non-binding code of practice in this area. The risk here is that, if this is not done,

disclosures may vary radically from company to company, and this may not be helpful in meeting the objectives of Christian Aid and others.' Another respondent said: 'The possible competitive disadvantages that may arise from the voluntary public disclosure of CBC template information may, in our view, be substantially reduced were all relevant MNCs required to similarly disclose this trade sensitive information.'

This second table classifies the range of responses we received in response to question 3.

| Answer                                                                                                                                          | No. of companies | %  |
|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------|----|
| <b>Would your company object to a legal requirement for your company and other major companies to publish their country by country reports?</b> |                  |    |
| Expresses positive view towards prospect of legal requirement                                                                                   | 4                | 7  |
| Expresses negative view towards prospect of legal requirement                                                                                   | 9                | 17 |
| States commitment to comply with any new legal requirement, without expressing opinion on such a requirement                                    | 17               | 31 |
| Refers to alternative existing reporting requirement (eg Transparency and Accounting Directive)                                                 | 9                | 17 |
| No opinion expressed                                                                                                                            | 15               | 28 |

Again, a wide range of views and explanations were expressed in the responses to this question.

For those companies that were clearly positive about the prospect of CBCR legislation, the benefit of a standard format was significant: 'In our view, the best way forward where matters of disclosure are concerned is for a formal, statutory regime to be put in place, since this will provide clarity and consistency,' commented one organisation.

The desire for consistency was voiced by some of those companies that said they were committed to complying with any new legal requirement, with an emphasis on consistency across countries. For example, one company stated: 'If future CBCR disclosures were required to be made public for all companies, then we would respond accordingly at the time. However, it is essential that any such future requirement is international, including the US, and not limited to UK or EU.' Another respondent said: 'I would be very concerned about unilateral law change. Should the UK government require CBCR information for UK-based groups to be made publically available, but the governments in other countries not enact such a law, UK-based groups may be placed at a significant competitive disadvantage.' A third respondent said: 'We would be willing to make our information public, in the context that this is required of all companies.'

The reasons for objecting to a legal requirement were varied. For some, the objection was that any new law would duplicate existing requirements: 'We do not consider that a law would greatly alter the information we currently disclose due to our current disclosure of information, which we already consider to be clear,' stated one comment.

For others, the concerns were clearly that new rules would be different to existing requirements, and might be misinterpreted. As one company told Christian Aid: 'We are somewhat hesitant about how comprehensible a picture will be conveyed by the CBCR given the context of tax and accounting issues [specific to business model].' Some simply consider CBCR information to be too sensitive, for example: 'Our company would not favour such a law or directive since we consider the information to be commercially sensitive and confidential.'

A number of companies provided details of how they would like discussions about any new legislation to be conducted: 'We would be prepared to engage with the UK government and others to consider any requirements to publish CBC data, provided such requests were consistent and proportionate to the administrative burden of collection and dissemination.' Similarly: 'In principle, we would not object to further legislation requiring the publication of CBC information. However, we trust that, in developing any such legislation, consideration will be given to producing a disclosure that is useful to readers of the information.'

The most common response to question 3, however, was for companies to state simply that they would be happy to comply with any regulations, without expressing any clear opinion about them. For example: '[We] intend to comply with the requirements as and when introduced, including making the information available in its published accounts and/or its website as required.' And: 'As the debate continues, we will, of course, fully comply with any UK or European legislation in this area.' In the same vein: 'If publicly-available CBCR becomes a statutory obligation for companies...[we] would be happy to comply in full.'

A number of companies did sidestep the issue through mentioning other disclosure regimes to which they are subject; this was especially notable in the extractives sector where reference was made to the requirement under EU Accounting and Transparency directives to report payments to governments. Most banks that responded referred to the CRDIV obligations to which they are subject, though unlike the extractive companies, the majority did acknowledge that the CBCR proposed by the BEPS Action Plan is different, and generally expressed an opinion.

Last, we feel we should note that many companies chose to state their strong commitment to tax transparency.

|                                       | No. of companies | %  |
|---------------------------------------|------------------|----|
| States commitment to tax transparency | 28               | 52 |

## Analysing the results

There is clearly a range of views, as illustrated in the quotes above, but several conclusions do appear to emerge:

- FTSE100 companies have a strong commitment to transparency in their tax affairs.
- Only a minority of companies have a clearly-stated objection to legislation requiring public CBCR.
- A number of FTSE100 companies positively favour CBCR, either as a voluntary or statutory obligation.
- FTSE100 companies seem more willing to accept new regulations on CBCR than to consider voluntary disclosure.
- A minority of firms have some clearly stated concerns that need consideration.

While these conclusions cannot be taken as a ringing endorsement of public CBCR from the FTSE100, it does appear that only a minority (17%) of companies are strongly opposed to public CBCR. This suggests that the perception that big business as a whole is against public CBCR is inaccurate. It should also be noted that two of the companies opposing legislation do so on the basis that the legislation would merely duplicate existing reporting requirements, rather than on the substance of CBC reporting itself.

Based on companies' responses, it is clear that many FTSE100 companies are committed to transparency in their tax affairs, and that most companies are either positively in favour of a move towards CBCR, or do not have strong objections to legislation. Indeed, some companies appear to welcome legislation requiring them to publish their CBC reports. For example, one company told us: 'In our view, the best way forward where matters of disclosure are concerned is for a formal, statutory regime to be put in place, since this will provide clarity and consistency.'<sup>21</sup>

This finding seems consistent with a survey of CEOs by PwC in 2014, in which nearly 60% agreed that 'multinationals should be required to publish the revenues, profits and taxes paid for each territory where they operate', while just under 20% disagreed.<sup>22</sup> Indeed, the PwC survey suggests that support for CBCR regulation is stronger when the sample of companies surveyed is broader than the FTSE100.

This does not mean that the concerns of businesses should be ignored. They do need to be carefully considered, and we seek to make a first attempt at doing this in the following section below. However, in a context where there is strong support from outside the private sector for public CBCR, and only limited outright objection from within the private sector, it would seem that these concerns are not universally shared, so should not be seen as a barrier to legislation. Rather, they should be seen as key points for debate in how legislation may be developed and structured. We hope that the deliberation on these concerns, which follows, represents a starting point for discussions.

## OECD consultation: another story?

Christian Aid's findings initially appear to contrast with the outcome of the OECD's discussions, namely that CBC reports should be seen only by tax authorities. Subsequent OECD guidance has stressed the need to keep CBC reports confidential.

The OECD's reasoning is that confidentiality is necessary to protect confidential information (trade secrets, for instance) and other commercially sensitive information.<sup>23</sup> However, in response to Christian Aid's survey, only three companies (6% of those responding) suggested that a concern about commercially sensitive information justified opposition to legislation on public CBCR (four others mentioned it as a concern preventing *voluntary* reporting).

Are companies less willing to be clear about their concerns with Christian Aid than they are with the OECD? Perhaps. Looking at the responses to the OECD Consultation on BEPS Action 13,<sup>24</sup> which included proposals on CBCR, 17 out of 117 companies and other respondents representing private sector interests (15%), raised concerns about 'commercially sensitive' information. A further 45 (38%) raised issues about 'sensitive' information, suggesting that a total of 53% of companies have a strong concern about loss of commercially sensitive information.

However, the OECD consultation is not directly comparable to Christian Aid's FTSE100 survey. First, the former was a consultation, rather than a survey, because respondents to the OECD self-selected, making it more likely to result in the strongest views being expressed. The OECD did not explicitly ask about making the CBC report public, although it did ask about confidentiality, and many respondents aired concerns about the risks of the information being made public. More significantly, the OECD consultation covered a wider range of topics than just CBCR. If we look at companies' detailed explanations of their concerns, we can see that many focused on data that is not included in CBC reports.

Furthermore, only 50% of those private sector respondents which said they had concerns about sensitive information explained why. Most objections (60%<sup>25</sup>) were solely about disclosures that would not be included in CBC reports. For example, the most prominent objection raised was concern about the requirement for details of the location and job titles of the 25 highest earners to be declared – information which would not be required in CBC reports. This was cited by a third of those giving reasons for their concern.

Of the remaining objections, it is not clear which do relate to information in CBC reports. While 30% of companies responding to the OECD consultation **may** have outlined a concern about the sensitivity of information that would be contained in CBC reports, the actual level of concern may be lower.

While accepting that the OECD consultation is not analogous to Christian Aid's survey, both pieces of research suggest that the majority of private sector respondents do not have clearly stated concerns about CBC report information being made public.

## What are companies' stated concerns about CBCR?

While there are many good reasons for governments to introduce CBCR (for example, ensuring that all governments are able to access the reports; increasing accountability of corporations and government tax policies; and providing better information for investors) and a number of companies appear to agree with this, it is only through addressing companies' concerns that CBCR will become a reality.

Looking at both the FTSE100 survey, and the responses to the OECD, the concerns, where explained, appear to be:

- misinterpretation of the information
- sector/business model-specific concerns
- contracts that forbid disclosure
- where a company only performs one function in a particular country, meaning that CBC reporting would potentially divulge very specific information
- costs
- concerns over voluntary disclosure.

We have omitted those who see CBCR as merely duplicating existing regulation because, while excessive regulation is a valid concern, it seems clear to both Christian Aid and the majority of companies that CBC reports would represent new information being reported.

We will examine each of these in turn.

### Misinterpretation of the information

*'For large and complex multinational groups ... who report publically by division, publishing a prescribed set of numbers by country will inevitably need detailed clarification and will clearly have the potential for conclusions to be drawn by the reader that are simply wrong.'* – Response to Christian Aid survey.<sup>26</sup>

The main objection appears to be that the information provided might be misinterpreted, with negative results – reputational damage seems to be the main concern. It is, however, unclear why the result of CBCR should be misinterpretation.

Indeed, when PwC looked at the potential impact of a form of public CBCR for financial services companies, it found that 'the balance of opinion suggests that these provisions (public reporting of CRDIV country by county reports) are likely to have some impact, as intended, in improving the trust of citizens of the European Union in the financial services sector. Specifically, our stakeholder survey suggests that the respondents expect Article 89 to have some positive impact on the transparency and accountability of, and on the public confidence in, the financial services sector in the EU.'<sup>27</sup>

This does not suggest that information will be misinterpreted; indeed a further finding by PwC suggests that some companies may deliberately misrepresent their affairs in their existing financial



reports: 'Our results suggest that improved disclosure quality, which is a key objective of CBCR, could improve firms' competitive outcomes. The analysis suggests that an improvement in disclosure quality is associated with a reduction of earnings management, which could have positive impacts on firms' competitiveness.'<sup>28</sup>

This finding helps explain why an increasing number of investors support CBCR, which will provide better information, in a standard, comparable format, on which they can base their investment decisions, and will reduce the likelihood of companies artificially massaging their figures. Tax represents a reputational, cash-flow and financial risk<sup>29</sup>; investors therefore need the information to assess that risk.

Many who argue that CBCRs will be misinterpreted base their argument on recent media stories – most commonly the tendency of such stories to look at taxes paid in relation to turnover rather than profits. While this may be a valid criticism of recent media reporting, it is less clear why it should serve as a criticism of CBCR. Currently, it can be very difficult to obtain the range of information that would ideally be used to inform a comment on a multinational company's operations. Given that CBC reports will clearly report turnover and profits, taxes paid and other information, all on a single line for each country, it will be much more likely that resulting media reports will contain more accurate information and analysis.

Indeed, armed with better, standardised, and comparable data about companies, it is likely that trusted third parties will use the data, making it much more difficult for poor quality analysis or misinformation to gain credibility. The alternative, given that media interest in corporate tax affairs does not appear to be slowing, would appear to be a continued challenge to enabling informed analysis.

It may, of course, be the case that even with the CBC report, questions are raised as to why turnover, profits and so on are allocated in the way they are to particular countries, but it would be wrong to describe such questioning as undesirable misinterpretation. It is entirely legitimate for the media and other observers to question the efficacy of the tax system, its results, and where responsibility for undesirable outcomes lies.

Indeed, to ensure we have tax systems that are trusted and respected, it is necessary to engage in such debates. While these may have been regrettably absent until recently, that only seeks to enhance their desirability now. Furthermore, as we enter a period of change in the international tax system with the BEPS actions, it is vital that it is possible to track the impact of these changes. In the discussion draft on monitoring BEPS, the OECD highlighted the potential role for CBCR in assessing the effectiveness of the BEPS Action Plan<sup>30</sup>. Instead of creating misunderstanding, CBCR therefore represents a huge opportunity to increase our understanding of tax systems.

Some companies agree. One company willing to make its CBC report public told Christian Aid: 'It is important that there is clarity of information available in the public arena.' It is planning public reporting combined with additional disclosure to explain the tax regime in which it operates. That this company, which has a very low tax charge, is willing to make such disclosures public should give

confidence to other companies that good compliance can be explained and understood.

### **Sector and business model-specific concerns**

*'The reason for our hesitation may perhaps be illustrated by a brief further explanation of our business and the way taxing rights over our profits are allocated between relevant jurisdictions.'* – Response to Christian Aid survey<sup>31</sup>

These concerns appear to be a subset of the misunderstanding concerns: that the way in which a certain sector or business is run will look anomalous in comparison to other companies and put it at risk of misunderstanding. Examples include companies that are set up as Real Estate Investment Trusts (REIT) and those with a franchise model, where the majority of the firm's activity is leasing intellectual property to franchise operators.

While it is certainly true that CBC reports may look different for such companies, the case has not been made that this renders CBCR generally undesirable. It is possible for companies to explain their structures and/or the tax regimes in which they operate to enable readers to understand their situation (third parties can also play a role here, eg Fair Tax Mark). Furthermore, as highlighted in the previous section, the fact that one FTSE100 company with a low tax charge is willing to make information publicly available shows that this view is shared by at least some companies.

While not a reason to reject public CBCR entirely, this concern does suggest that a requirement for public CBCR should make provision for companies to provide explanatory comments over and above any included in the template. Indeed, as already highlighted, one company makes this point explicitly: 'We trust that, in developing any such legislation, consideration will be given to producing a disclosure that is useful to readers of the information. That will hopefully allow businesses the flexibility to provide the information that is most relevant to their organisation.'

### **Where a company's operations are so specialised that the CBC report would potentially divulge information specific enough to compromise a company's negotiating position**

*'For an MNE operating in a high-tech niche market with a few very large customers, the negotiating position for product prices would be impaired if the value chain profits were transparent.'* – AMV response to OECD consultation<sup>32</sup>

This concern only appeared in companies' responses to the OECD, but it does appear to be related to CBC reports. Essentially, the concern is that a company's operations in a given country could be limited to one very specific function, so the CBC report could be effectively equivalent to providing trade secrets.

While it is unfortunate that the small number of companies that mentioned this concern did not provide examples, there does appear to be, in principle, some merit to this concern because some operations may indeed be very specific. However, it remains unclear just how much this would differ from very specialised companies operating wholly within one country; presumably their annual



accounts would also provide a similar level of detail, yet such companies would not be given a derogation from reporting.

While this concern may need looking into carefully, it should be noted that it was raised by very few companies (and none of the FTSE), and in relation to very specific circumstances (e.g. high-tech niche market with a few very large customers), and so is not a widespread concern. There should be a very high threshold for considering making allowances for this concern. They should not be granted just to protect pricing information, because the Arm's Length Principle (ALP – the principle for allocating profits on MNCs' internal transactions<sup>33</sup>) relies upon the idea that prices are publicly available both to support companies' pricing structures and to be used by revenue authorities to check compliance. Given that most companies support the continuation of the ALP, public CBCR should not be prevented or limited to allow MNCs to avoid providing public information that enables the ALP to function.

Indeed, this is at the heart of the argument around commercially sensitive information. While there may be some information that companies would prefer was not made public, it seems that generally this information would be useful to the market because it would improve competition - markets work on information. We therefore need to be very careful when companies claim commercial sensitivity, to ensure that they are not merely seeking to preserve a monopoly or oligopoly position.

## Costs

*'We are prepared to engage with the UK government and others to consider any requirements to publish CBC data provided such requests were consistent and proportionate to the administrative burden of collection and dissemination.'* – Response to Christian Aid survey.<sup>34</sup>

Interestingly, while the cost of CBCR has been often raised as a concern previously,<sup>35</sup> only two companies raised the issue of costs in their responses to our survey. In both cases this was, as indicated above, a plea to ensure the compliance burden is proportionate, rather than claiming costs as a definitive reason to object to CBCR. Given that many countries, including the UK, have committed to requiring MNCs to provide a CBC report to tax authorities, it is clear that there would be minimal extra costs involved in making such reports public.

## Concerns over voluntary disclosure

*'We feel that until there is a statutory requirement for all multinationals to publish such information, unilateral publication could put the Group at a commercial disadvantage.'* – Response to Christian Aid survey.<sup>36</sup>

Several companies raised concerns about voluntary disclosure, suggesting that it could lead them to suffer competitive disadvantages (though without explaining exactly what these disadvantages would be).

What is notable is an acknowledgement by another FTSE100 firm: 'The possible competitive disadvantages that may arise from the voluntary public disclosure of CBC template information may, in our

view, be substantially reduced were all relevant MNCs required to similarly disclose this trade sensitive information.<sup>37</sup>

For Christian Aid, the responses to our survey suggest that governments should not sit back and hope that MNCs will voluntarily take action. While some will, our survey suggests that many would accept regulations but are less likely to go forward by themselves.

As one FTSE100 member company told us: 'Given that public disclosure of such reporting is not currently required under international standards or UK regulation, I think you would agree that to publish such data before it is required of all companies would place [us] at a commercial disadvantage... If publicly available country by country reporting becomes a statutory obligation for companies, [we] would be happy to comply in full.'<sup>38</sup>

Given that the EU is currently debating the question of regulations requiring public CBCR,<sup>39</sup> the fact that companies appear less wary of regulatory disclosure than they are of voluntary disclosure is an important finding. Not only would regulations create a more level playing field for companies, they would also help to ensure companies' reports are more comparable with one another. Common standards can be set, rather than companies developing a multiplicity of standards.

## Conclusion

There are several key findings from Christian Aid's survey of the FTSE100 (and previous ones such as PwC's 2014 CEO survey<sup>40</sup>):

- Only a minority of companies are clearly and unequivocally opposed to public CBCR.
- Most companies would appear not to object strongly to legislation requiring public CBCR of them and their competitors.
- Companies seem less concerned about the public disclosure of commercially sensitive information in CBC reports if the disclosure is required by law of all similar companies.
- Companies seem more concerned about the consequences if disclosures were made by them voluntarily.

These findings, and the above analysis of the concerns raised in response to this survey and the OECD consultation, make it clear that legislators should be much more confident about legally requiring public CBCR as the best way to improve tax transparency in a way that works for all – businesses, investors and the public.

There are clearly several factors to be considered in designing such regulations. Ensuring that companies are able to give their explanations of the figures and facts in their reports is a prime example. However, these detailed questions are most likely to be resolved in the process of formulating and discussing legislation, rather than in a more abstract way beforehand.

The responses to our survey show that the majority of FTSE100 companies say they are committed to tax transparency, and can be expected to be willing to engage positively in such a process, as can Christian Aid.

The benefits of legislation over voluntary action are strong for businesses, investors and society at large. Companies benefit from the level playing field that is created by legislation, and though increased trust from society. Investors have better information to understand the risks they are taking, and society as a whole is better able to understand how companies work, how government policy affects company behaviour, and as such, hold both more accountable for their actions.

With the European Parliament demanding CBCR as part of the Shareholder Rights Directive and the European Commission conducting an impact assessment on CBCR, there is a perfect opportunity to resolve those remaining issues and make CBCR a reality. With the UK Government committed to looking at CBCR on a multilateral basis, supporting such progress in the EU appears the logical approach for the UK. However as seen with recent progress on transparency of beneficial ownership<sup>41</sup>, the most effective way for the UK to influence multilateral change in the EU may be to legislate unilaterally in the UK first.

## Endnotes

- <sup>1</sup> For full details of the proposals for Country by Country reporting see Eurodad, 'Exposing the lost billions', [http://eurodad.org/uploadedfiles/whats\\_new/reports/cbc%20report.pdf](http://eurodad.org/uploadedfiles/whats_new/reports/cbc%20report.pdf)
- <sup>2</sup> For a summary, see Financial Transparency Coalition, 'Country by Country Reporting', <http://financialtransparency.org/issues/country-by-country-reporting/> for a summary
- <sup>3</sup> See Transparency International, 'European Parliament committee sets the tone for Europe's debate on multinational transparency', [www.transparency.org/news/pressrelease/european\\_parliament\\_committee\\_sets\\_the\\_tone\\_for\\_europes\\_debate\\_on\\_multinational](http://www.transparency.org/news/pressrelease/european_parliament_committee_sets_the_tone_for_europes_debate_on_multinational)
- <sup>4</sup> See International Development Committee, 'Tax in Developing Countries: Increasing Resources for Development', especially para 66, [www.publications.parliament.uk/pa/cm201213/cmselect/cmintdev/130/13006.htm#a10](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmintdev/130/13006.htm#a10)
- <sup>5</sup> For example, see Eurosif's position on CBCR, [www.eurosif.org/eurosif-position-on-country-by-country-reporting/](http://www.eurosif.org/eurosif-position-on-country-by-country-reporting/)
- <sup>6</sup> United Nations Economic Coalition for Africa, *Illicit Financial Flows*, [www.uneca.org/publications/illicit-financial-flows](http://www.uneca.org/publications/illicit-financial-flows)
- <sup>7</sup> See SSE, 'Just a third of British adults believe big companies pay their fair share of tax, finds YouGov research from SSE and ICAS', <http://sse.com/newsandviews/allarticles/2015/06/just-a-third-of-british-adults-believe-big-companies-pay-their-fair-share-of-tax-finds-yougov-research-from-sse-and-icas/> – where only 6% of respondents said they trust companies to provide accurate information on their tax affairs; and SSE, 'Just a third of British adults believe big companies pay their fair share of tax, finds YouGov research from SSE and ICAS', <http://sse.com/newsandviews/allarticles/2015/06/just-a-third-of-british-adults-believe-big-companies-pay-their-fair-share-of-tax-finds-yougov-research-from-sse-and-icas/> – where 84% agreed MNCs' accounts should be more transparent.
- <sup>8</sup> For example, SSE.
- <sup>9</sup> Fair Tax, [www.fairtaxmark.net](http://www.fairtaxmark.net)
- <sup>10</sup> Including EU, US and Canada.
- <sup>11</sup> Article 89 of Directive 2013/36/EU, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0036&from=EN>
- <sup>12</sup> See OECD, 'Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting', <http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf>
- <sup>13</sup> See for example 'OECD country-by-country reporting: Strangled at birth', <http://uncounted.org/2015/06/08/oecd-country-by-country-reporting-strangled-at-birth/>
- <sup>14</sup> For example, HMRC's impact note for CBCR estimates costs of £200,000 per annum in information exchange costs.
- <sup>15</sup> See Budget 2014 p12 <http://www.budget.gov.ie/Budgets/2014/Documents/Department%20of%20Finance%20International%20Tax%20Strategy%20Statement.pdf>
- <sup>16</sup> See Finance Act 2015, part 4, paragraph 122, [www.legislation.gov.uk/ukpga/2015/11/section/122/enacted](http://www.legislation.gov.uk/ukpga/2015/11/section/122/enacted). And Royal Decree 634/2015 in Spain.
- <sup>17</sup> Conservative Party Manifesto 2015, p11, [http://issuu.com/conservativeparty/docs/ge\\_manifesto\\_low\\_res\\_bdech3a47a0faf?e=16696947/12362115](http://issuu.com/conservativeparty/docs/ge_manifesto_low_res_bdech3a47a0faf?e=16696947/12362115)
- <sup>18</sup> Comments received on Discussion Draft on transfer pricing documentation and country-by-country reporting, OECD, <http://www.oecd.org/ctp/transfer-pricing/comments-discussion-draft-transfer-pricing-documentation.htm>
- <sup>19</sup> Alex Cobham, <https://twitter.com/alexcobham/status/609317645297577984/photo/1>
- <sup>20</sup> At time of publication we had received responses from: Anglo American, Associated British Foods, Admiral Group, Aggreko, Antofagasta, ARM Holdings, AstraZeneca, BAE Systems, Barclays, British American Tobacco, BG Group, British Land Co, Bunzl, BP, Burberry Group, Coca-Cola HBC, Compass Group, Capita Group, easyjet, Glencore, GlaxoSmithKline, Hammerson, HSBC Holdings, International Consolidated Airlines Group, InterContinental Hotels Group, 3i Group, Intertek Group, ITV, Johnson Matthey, Land Securities Group, Lloyds Banking Group, London Stock Exchange Group, Mondi, Next, Persimmon, Pearson, Reckitt Benckiser Group, Royal Bank of Scotland, Royal Mail, Rolls Royce Group, Randgold Resources, RSA Insurance Group, SAB Miller, J Sainsbury, Schroders, Smith and Nephew, SSE, Tesco, Tullow Oil, TUI AG, Taylor Wimpey, Unilever, United Utilities Group, Weir Group. We would like to extend our thanks to all who responded.
- <sup>21</sup> Response to Christian Aid survey.
- <sup>22</sup> See [www.pwc.com/gx/en/ceo-survey/2014/explore-the-data.html?WT.mc\\_id=cs\\_gx-hero-home\\_CEO-Survey-2014](http://www.pwc.com/gx/en/ceo-survey/2014/explore-the-data.html?WT.mc_id=cs_gx-hero-home_CEO-Survey-2014)
- <sup>23</sup> OECD, *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*, OECD, 2014, [www.keepeek.com/Digital-Asset-Management/oecd/taxation/guidance-on-transfer-pricing-documentation-and-country-by-country-reporting\\_9789264219236-en#page26](http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/guidance-on-transfer-pricing-documentation-and-country-by-country-reporting_9789264219236-en#page26)
- <sup>24</sup> OECD, *Discussion Draft On Transfer Pricing Documentation and CBC Reporting*, OECD, 2014, [www.oecd.org/ctp/transfer-pricing/discussion-draft-transfer-pricing-documentation.pdf](http://www.oecd.org/ctp/transfer-pricing/discussion-draft-transfer-pricing-documentation.pdf)
- <sup>25</sup> Author's own calculation
- <sup>26</sup> Response to Christian Aid survey.
- <sup>27</sup> European Commission, *General assessment of potential economic consequences of country-by-country reporting under CRD IV*, Study prepared by PwC for EC, 2014, p9, [http://ec.europa.eu/internal\\_market/companyl/docs/modern/141030-cbcr-report\\_en.pdf](http://ec.europa.eu/internal_market/companyl/docs/modern/141030-cbcr-report_en.pdf)
- <sup>28</sup> Ibid. Earnings management is defined as: 'where a firm's management use accounting discretion in presenting financial results in order to present the entity to investors in an artificially positive light'.
- <sup>29</sup> See Christian Aid, *Tax and Sustainability: A framework for business and socially responsible investors*, <http://www.christianaid.org.uk/images/tax-and-sustainability-2011.pdf>
- <sup>30</sup> See <http://uncounted.org/2015/05/13/measuring-tax-avoidance-what-data-for-beps-11/>
- <sup>31</sup> Response to Christian Aid survey.
- <sup>32</sup> AWW response to OECD consultation on BEPS Action 13, <http://www.oecd.org/ctp/transfer-pricing/volume1.pdf>
- <sup>33</sup> The Arm's Length Principle is simple, in that MNCs internal transactions should be priced at the same price as if the transaction were taking place between unrelated companies. While simple in theory, it is almost impossible to apply in practice, not least as many transactions that take place within companies would never take place in the open market.
- <sup>34</sup> Response to Christian Aid survey.
- <sup>35</sup> For example, see paragraph 5.3 in the Chartered Institute of Taxation response to the International Development Committee Report on Tax and Development, [www.publications.parliament.uk/pa/cm201213/cmselect/cmintdev/130/130v05.htm](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmintdev/130/130v05.htm)
- <sup>36</sup> Response to Christian Aid survey.
- <sup>37</sup> Response to Christian Aid survey.
- <sup>38</sup> Response to Christian Aid survey.
- <sup>39</sup> The European Parliament has included proposals for CBCR in its negotiating mandate for the Shareholder Rights Directive.
- <sup>40</sup> See note 18.
- <sup>41</sup> The UK made the unilateral decision to create public registers of beneficial owners of companies in advance of EU discussions on such regulations. The UK made reference to its unilateral move in the negotiations (e.g. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/258997/P-M-letter-tax-evasion.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/258997/P-M-letter-tax-evasion.pdf)). The result was EU wide agreement to create central registers with a minimum level of public access.