

# Country-by-Country Reporting

An overview and comparison of initiatives

—  
April 2023

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01

# Introduction



# Introduction

## Content

- There are now a number of frameworks, both legislative and voluntary, that have been implemented or are being considered for implementation. Initially these focused on the financial and extractives sectors, but other initiatives impact on all industries and sectors.
- The initiatives discussed in this paper cover:
  - Action 13 of the OECD's BEPS (Base Erosion and Profit Shifting) Action Plan regarding Country-by-Country reporting and transfer pricing documentation.
  - EU Public Country-by-Country Reporting.
  - Capital Requirements Directive IV (CRD IV).
  - EU Accounting Directive: Chapter 10.
  - US Proposal on Public Country-by-Country Reporting.
  - FASB Income Taxes disclosure proposal.
  - Dodd Frank Act: Section 1504.
  - Extractive Industries Transparency Initiative (EITI).
  - Global Reporting Initiative (GRI) Standard 207.
  - Australia Public Country-by-Country Reporting Proposal.
- This paper provides a brief introduction into the different reporting requirements, current status and some of the issues to be considered. The key requirements of the legislative frameworks are summarized into a table for comparison on page 51. The paper is based on our understanding of the key requirements as at April 2023 and should not be taken to be comprehensive. It will be updated periodically as and when there are any new developments.

# Introduction

## Challenges

- Public country-by-country reporting was initially focused on a few specific sectors, but with the imposition of new requirements from the OECD, the EU initiatives and public interest in multinationals' cross-border tax affairs, this is now a pressing issue for all qualifying multinationals.
- Companies need to consider the level of resources and costs involved in gathering the data, the ease of collecting the right data, potential system changes and how technology can assist. Consideration should be given to whether a form of assurance over the process is appropriate given the potential uses of the data both by tax authorities and the public.
- Providing an accompanying narrative and articulating the tax position also assists in making the information as useful as possible to the reader.
- The tax transparency debate is constantly evolving and companies should be actively involved in shaping this debate, as well as keeping abreast of initiatives and how this may impact them.
- With environmental, social and governance (ESG) rising on leadership agendas globally, tax practices and governance are becoming critical ESG measures, with tax transparency often being used as a key metric for demonstrating a responsible attitude towards tax. One thing that has become clear, however, is that not all businesses are at the same point in their tax transparency journey and not all have the same tax transparency destination.

02

# CbyC Reporting (non-public) — BEPS Action 13



# CbyC Reporting (non-public) — BEPS Action 13

## Introduction

On July 19, 2013 the OECD released an Action Plan on Base Erosion and Profit Shifting (BEPS). The Action Plan covered 15 specific Actions. Action 13 focuses on a company’s global value chain and transfer pricing policy and documentation. It aims to introduce consistent documentation and access to information to ensure all relevant tax authorities have access to the same information about a group's value chain and the resulting tax consequences for the purposes of high level transfer pricing risk assessment.

The BEPS Action 13 report (Transfer Pricing Documentation and Country-by-Country Reporting), published on October 5, 2015, provides standards for a three-tiered (Master File, Local File and Country-by-Country Report) standardized approach to transfer pricing documentation. For the purpose of facilitating implementation, BEPS Action 13 includes a CbyC Reporting Implementation Package, which consists of model legislation — that could be used by countries to require the ultimate parent entity of an MNE group to file the CbyC Report in its jurisdiction of residence, and three model Competent Authority Agreements (CAA) that could be used to facilitate implementation of the exchange of CbyC Reports, based on the Multilateral Convention on Administrative Assistance in Tax Matters (MCAA), bilateral tax conventions or Tax Information Exchange Agreements (TIEAs), respectively.

The CbyC Reporting requirements has been implemented for fiscal years beginning on or after January 1, 2016, and annual CbyC reporting is a BEPS “minimum standard” and shall be implemented by all Inclusive Framework countries.

In February 2020, the OECD launched a public consultation process seeking input from stakeholders in conducting the 2020 review. The public consultation ended and the review work is still ongoing to account for the changes coming out of Two Pillar Global Reform. The outcome is expected to be published in 2023.

According to the OECD, as of October 2022, over 100 jurisdictions had introduced a CbyC reporting obligation, and over 3,300 relationships were in place for the exchange of CbyC reports between jurisdictions.

# CbyC Reporting (non-public) — BEPS Action 13

## Timeline

The key dates in relation to Action 13 are:

- October 2015 — Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 — 2015 Final Report
- September 2017 — Country-by-Country Reporting: Handbook on Effective Implementation
- September 2017 — Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment
- April 2017 — Guidance on the Implementation of CbyC Reporting (updated as of December 2019)
- September 2017 — Guidance on the Appropriate Use of Information Contained in CbyC Reports
- May 2018 — Country-by-Country Reporting — Compilation of Peer Review Report. Subsequently, yearly update reports have been issued. The last report was released in October 2022
- November 2019 — OECD publishes a list of common errors made by MNEs in preparing Country-by-Country reports
- May 2020 — Review of Country-by-Country Reporting Consultation (ongoing)





# CbyC Reporting (non-public) — BEPS Action 13

## Reporting requirements

**Table 1 — CbyC template to include on a tax jurisdiction basis:**

- Revenues (split between related party and unrelated party).
- Profit (loss) before income tax.
- Income tax paid.
- Income tax accrued — current year.
- Stated capital.
- Accumulated earnings.
- Number of employees.
- Tangible assets other than cash and cash equivalents.

**Table 2 — should list for each tax jurisdiction (i.e. country):**

- Name of constituent entities resident in each tax jurisdiction.
- Tax jurisdiction of incorporation if different from tax jurisdiction of tax residence.
- Main business activities for each constituent entity from a pre-defined list of options.

**Table 3**

- “Disclosures” should include any further brief information or explanation considered necessary by the reporting entity or that would facilitate the understanding of the compulsory information provided in the CbyC report.

# CbyC Reporting (non-public) — BEPS Action 13

## Some key considerations



### » Sources of data

Recognizing that groups have different financial systems, accounting policies and approaches to tax management and reporting, the OECD have allowed flexibility in the source of data. Although a consistent approach should be followed as between entities and countries, as well as year on year, changes can be made if the reasons and implications for this are explained. Groups will need to determine the best approach for them and consider the implications of using group versus local GAAP.



### » Entity versus country level reporting

The template requires data to be disclosed on an aggregated country basis, rather than an entity level, which was originally proposed. Groups may nevertheless need to gather data entity by entity and then aggregate it to produce the country level data .



### » Scope

Entities that are included within the consolidated group for financial reporting purposes should be included in the template. This may simplify the process of determining how to treat joint ventures and minority interests (addressed in the guidance).

Clarity has been provided that ‘any separate business’ is in scope of the rules including trusts and partnerships if they are part of the consolidated group for financial reporting purposes.

# CbyC Reporting (non-public) — BEPS Action 13

## Some key considerations



### » Data Definitions

The OECD have provided guidance on what should be included for each piece of data although this is deliberately high level. There is an expectation of consistency in application across the data points, across countries, and over time. It is worth investing time up front to determine how to interpret the guidance for your group, agree on the assumptions you are going to make and documenting these to ensure consistent application and retain support for the final filing. The source of data should be disclosed in Table 3.



### » Independent contractors

Independent contractors may be included where they are ‘participating in ordinary operating activities’. Groups will need to consider what this means for their business and the most appropriate reporting.



### » Reconciliation

There is no formal requirement for reconciliation to group financial statements or local filings. However groups should consider whether it is appropriate to do this for internal control purposes, and to have the relevant facts should local administrations raise queries. Use of the CbyC report in the BEPS 2.0 Pillar 2 Transitional Safe Harbor calculations has put extra pressure on companies to ensure that their data is accurate.



### » Filing mechanism

The CbyC report should be filed with the tax authority of the ultimate parent entity’s country, which will then share this automatically with countries where the MNE has a taxable presence, provided that a Competent Authority Agreement is in place and certain conditions are met regarding confidentiality, consistency and appropriate use.

# CbyC Reporting (non-public) — BEPS Action 13

## Some key considerations



### Transfer Pricing Documentation

The OECD has recommended a ‘big picture’ approach to documentation. It has outlined a three-tiered structure: in addition to the CbyC Report, a ‘Master File’ (MF) contains high-level information regarding the MNE’s global business operations and transfer pricing policies (it should be available to all relevant tax administrations) and a ‘Local File’ (LF) specific to each country that should identify material related party transactions, the amounts involved in those transactions, and the company’s analysis of the transfer pricing determinations made with regard to those transactions.

The MF focuses on value drivers of business profit; companies will need to elaborate on the group’s five largest products and/or service offerings.

Groups will need to consider the format and approach for the MF, and how they leverage existing documentation to produce it. As the file will be shared with multiple tax authorities, it is essential that it is succinct, clear and consistent with existing public information about the company.

The intention is that both the MF and LF should be filed directly with the tax administrations in each relevant jurisdiction.

Some countries require the LF and/or MF to be filed with the corporate income tax return, some require filing of the LF and/or MF within the same deadlines as those applicable for the corporate income tax return, while others provide time for companies to prepare once requested by the tax authority.

Notably, only the CbyC Report is a BEPS minimum standard (i.e. all BEPS Inclusive Framework members are expected to implement the requirement). It therefore remains up to the individual countries whether or not to implement MF and LF requirements.

03

# EU Public Country-by-Country Reporting



# EU Public Country-by-Country Reporting

## Introduction

Following a proposal put forward by the European Commission in April 2016 and lengthy negotiations among Member States, as well as between the Council of the EU and the European Parliament, the EU adopted the Public Country-by-Country Reporting Directive on November 24, 2021<sup>1</sup>.

The Directive requires multinational groups operating in the EU and that exceed certain size thresholds to publish certain information on their tax affairs largely based on the reporting requirements under BEPS Action 13, with some changes.

The European Commission was tasked to design and publish a common template and electronic reporting formats. The forms are expected to be adopted by the Commission on the third quarter of 2024.

## Timeline

Entry into force: December 21, 2021.

EU Member States have until June 22, 2023 to transpose the Directive into domestic legislation.

The rules will apply, at the latest, from the commencement date of the first financial year starting on or after June 22, 2024.

In-scope groups will have 12 months after the end of the balance sheet date of the relevant financial year to publish the report on income tax information. For example, for calendar year taxpayers, the first reporting year will be financial year 2025 and the report will be due by the end of December 2026.

However, individual Member States can opt for an earlier transposition and earlier reporting (e.g. six months from the end of the balance sheet date).

<sup>1</sup> Council Directive (EU) 2021/2101, amending the Accounting Directive 2013/34/EU.

# EU Public Country-by-Country Reporting

## Who does it affect?

The Directive applies to MNEs with total consolidated revenues exceeding EUR 750 million for each of the last two consecutive financial years, if the group's ultimate parent undertaking is either:

- Based in the EU, or
- Based in a third-country and operates in the EU through a qualifying subsidiary or branch<sup>1</sup>.

The disclosure obligation will also apply to EU entities that are not part of a group (i.e. standalone undertakings) that meet the size threshold. However, the rules do not apply to standalone undertakings or groups (including their branches) that are established or have their fixed place of business or permanent business activity in a single Member State.

The Directive includes a provision aimed at avoiding double reporting for the banking sector. Ultimate parent companies and standalone entities subject to CRD IV are exempted from the scope of the EU Public CbyC rules provided that the report made public based on CRD IV covers all activities performed by the entity and by the affiliated undertakings included in their consolidated financial statements. EU-parented banks are already within the scope of CRD IV and would be exempted from the EU public CbyC reporting provided their existing disclosure covers all of the entities included in their consolidated financial statement. However, non-EU parented banks operating in the EU would not benefit from the exemption.

The Directive does not provide for an exemption for entities that are subject to the reporting requirements under Chapter 10 (extractive industry).

<sup>1</sup>A qualifying EU presence is defined in accordance with Article 3 of the Directive 2013/34/EU and includes:

- Medium-sized or large subsidiaries that meet two of the following three conditions: a balance sheet greater than EUR 4 million, net turnover greater than EUR 8 million, or an average number of employees exceeding 50
- Branches which exceed the turnover threshold above (i.e. EUR 8 million) for each of the last two consecutive financial years.

Member States are nevertheless allowed to increase the limits above, up to EUR 6,000,000 for the balance sheet total and EUR 12,000,000 for the net turnover. In addition, the thresholds are periodically updated to keep pace with inflation.

# EU Public Country-by-Country Reporting

## Disclosure requirements

### For EU parented groups:

- The disclosure obligation lies with the EU parent. Reports must be filed in publicly accessible commercial registers in the relevant Member State as well as on applicable group websites (unless Member States opted for the publication exemption option described in the next slides).

### For non-EU parented groups:

- The main rule is that each of the qualifying EU subsidiaries or EU branches is required to disclose information for the in-scope group. EU subsidiaries and branches that do not have access to the required information at group level will need to ask the non-EU parent to provide the data required to enable them to meet their obligations in the EU.
- If the parent does not provide all the required information, the subsidiary or branch will be required to publish the report based on all the information it possesses and a statement indicating that its parent did not make the necessary information available.
- There is one exception to this rule, whereby the EU subsidiaries and branches of the non-EU headquartered group are exempt from their obligations if the non-EU parent has published the report on their website and has assigned one of the EU subsidiaries or branches to file the report with their national commercial registry.

There is a mandatory requirement that auditors check and state whether a company falls within scope and whether the report was published. Under the EU Directive, the auditor will not be required to provide assurance on the content of the report.



# EU Public Country-by-Country Reporting

## What to report

- A brief description of activities.
- Number of full time equivalent employees
- Revenue (including related-party revenue)<sup>1</sup>.
- Profit or loss before income tax.
- Income tax accrued (current year).
- Income tax paid (cash basis).
- Amount of accumulated earnings



The information must be broken down for each EU Member State where the group is active and also for each jurisdiction deemed “non-cooperative” by the EU (Annex 1 of the EU list of non-cooperative jurisdictions) or that has been on the “grey” list (Annex 2) list for a minimum of two years. Information concerning all other jurisdictions is reported on an aggregated “rest of the world” (ROW) basis.

The European Commission will develop a common template and electronic reporting formats machine-readable (expected in the third quarter of 2024).

<sup>1</sup>Revenue is defined as net turnover less dividends received from affiliated parties or income as defined under the relevant financial reporting framework (excluding value adjustments and dividends received from affiliated parties).

# EU Public Country-by-Country Reporting

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## Key challenges

### Differing country implementation

Member States are left with a number of choices with respect to domestic implementation of the Directive:

- Use of the so-called “safeguard clause”: Member States can choose to allow in-scope groups to defer the disclosure of commercially sensitive information for a maximum of five years – with the exception of data related to jurisdictions on the EU list of non-cooperative jurisdictions (Annexes I and II);
- Website publication exemption: Member States may opt to exempt companies from publishing the report on their websites, if the report is already made publicly available to any third party located in the EU, free of charge, on the website of a commercial registry.

Even more, the Directive is a minimum standard, and Member States may expand the scope of the Directive by, for example, requiring additional data points.

These different options and potential scope extensions will impact in particular non-EU headquartered groups, which generally have reporting obligations in each country where they have a qualifying presence. Such MNEs therefore need to consider how to achieve a consistent disclosure for each country and monitor developments in each EU jurisdiction. The Directive does not provide for priority rules when Member States make use of different options or expand its scope. As it stands and absent specific implementation guidance from individual Member States, the choice for one jurisdiction to give, for example, the option of a deferral of publication of certain data does not bind other EU jurisdictions.

# EU Public Country-by-Country Reporting

## Key challenges

### Alignment with OECD CbyC requirements

The public CbyC reporting requirements are similar to the OECD CbyC rules, but differences appear in respect to several data points: e.g. presentation of net turnover (no split is required under the public CbyC between turnover from third parties and those from related parties); no requirement to disclose tangible assets and stated capital under the public rules.

Another difference compared to OECD CbyC reporting refers to the way in which the information is presented. In particular the public CbyC rules require data to be provided on an aggregated basis for ROW countries (with the exceptions listed on the previous slides), whilst private CbyC reports present the information separately for each jurisdiction in which the group operates.

MNEs need to determine if current tax reporting systems can be aligned to produce information that complies with both private and public CbyC reporting requirements and identify where gaps need to be filled.

### Alignment with other public CbyC requirements

- Other countries in Europe (e.g. Norway, the UK) have also expressed an interest in introducing similar requirements.
- Outside Europe, Australia announced its intention to introduce public CbyC reporting rules for MNE beginning July 1, 2023, requirements expected to be broader than the EU rules. In the US, it was reported that the Financial Accounting Standards Board plans to require MNEs to provide a break-down of income taxes paid in the material jurisdictions in which the group is active.
- These developments are signaling an accelerated timeline for companies to be ready to report their tax payments.

04

# Capital Requirements Directive IV



# Capital Requirements Directive IV

## Introduction

The Capital Requirements Directive IV (CRD IV) – Directive 2013/36/EU – brings in transparency rules for EU institutions. CRD IV has introduced a requirement for institutions to disclose a number of data points, on a country-by-country basis.

## Timing

The first year report relating to the most recent accounting period ending prior to July 1, 2014 required public reporting of name, nature of activities, geographical location, turnover and number of employees and in scope entities.

After the first year reporting period, institutions must disclose the following additional items: profit or loss before tax, tax on profit or loss and public subsidies received.

The ongoing reporting deadline is December 31 each year (starting December 31, 2015) and disclosures should relate to the most recently ended accounting period prior to the reporting deadline.

## Key challenges

### Differing country implementation

Some countries have interpreted legislation in different ways, for example regarding filing requirement for data where parent is elsewhere, so groups need to consider how they achieve a consistent disclosure for each country.

### Recognizing wider contribution

The disclosure requirements for tax are limited to corporate income tax only, which is only one part of a company's total tax contribution. The legislation allows for disclosure of more information than required, and so groups should consider their overall strategy and whether they want to pro-actively demonstrate their wider contribution and/or include narrative related to the information disclosed.

### Alignment with OECD CbyC requirements

The CRD IV reporting requirements are similar to the OECD requirement, but only apply to regulated entities and have less data points, so institutions need to ensure data is consistent in each report, and that they create an efficient single compliance process to manage both obligations.

# Capital Requirements Directive IV

## Who does it affect?

CRD IV prescribes country-by-country reporting for 'institutions'. Institutions are defined as credit institutions and investment firms. Credit institutions are defined as 'a business whose undertaking is to receive deposits or other repayable funds from the public and to grant credits for its own account'. This includes all banks. Investment firms are 'any person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis'. Broadly, this excludes firms which are not permitted to hold client money.

## Disclosure requirements

CRD IV does not provide a template for disclosures and does not allocate responsibility for providing such a template to any particular organization. Institutions have determined their own approach to disclosure, based on common practice reporting.

## Key challenges

### What needs to be reported

CRD IV requires credit institutions and investment firms to report the following information by Member State and third countries in which they have an establishment, on a consolidated basis:

- a) Nature of activities and geographical location.
- b) Turnover.
- c) Number of employees (on a full time equivalent basis).
- d) Profit or loss before tax.
- e) Tax on profit or loss.
- f) Public subsidies received.

# Capital Requirements Directive IV

## Key challenges (Continued)

### When is reporting required

- Items **a to c** had to be publicly reported by all institutions on **July 1, 2014**.
- In addition items d to f needed to be provided to the European Commission confidentially by Global Systematically Important Institutions (**GSIs**) by **July 1, 2014**.
- By **December 31, 2015**, annual reporting of **items a to f** was required by all institutions.
- The information should be published (if possible) as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution and must be audited.



05

# EU Accounting Directive: Chapter 10





# EU Accounting Directive: Chapter 10

## Introduction

In July 2013 a Directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings was approved by the European Parliament. This piece of legislation follows on from the Dodd Frank Act Section 1504 legislation in the US, and requires large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests, to prepare and make public a report on payments made to governments on an annual basis.

## Timing

Companies in scope are required to publish the report no later than 11 months in after the end of their financial year by filing electronically with their local trade register.

## Status

Member States issued laws to enforce its application and reporting had to begin for financial years commencing on or after January 1, 2016 at the latest.

Under EU rules, listed and large non-listed companies that are active in the oil, gas, mining or logging sectors have specific reporting obligations.

They must report all payments to governments broken down by country. They must also report by project if these payments have been attributed to a specific project.

# EU Accounting Directive: Chapter 10



## Who does it affect?

Large undertakings and public-interest entities in the EU, with an activity involving exploration, prospection, development and extraction of minerals or oil and gas, or the logging of primary forests.

In addition, the rules will apply to many foreign-resident groups that are listed on an EU stock exchange.

The definition of large is determined by meeting two of three criteria in relation to balance sheet total, turnover or average number of employees.

Public interest entity refers to entities with transferable shares listed on a regulated market in the EU, certain credit institutions and certain insurance institutions.



## What does it require?

The disclosure of all payments to governments in individual and consolidated reports.

The reports are part of a company's annual financial reporting obligations and shall be published as laid down by the laws of each Member State.

Where the parent of a subsidiary is located in a Member State, and that subsidiary's payment is included in a consolidated report by the parent, the subsidiary is relieved from its reporting obligations.

# EU Accounting Directive: Chapter 10



## Disclosure requirements

- All single or series of payments over EUR 100,000 within a financial year.
- The total payments made to each government.
- For each type of payment, the total amount of payments made per project.
- Payments in kind need to be reported in value or in volume.
- This will be on a consolidated level where the parent has an obligation to prepare consolidated financial statements.



## Reporting requirements

Payments (amount paid whether in money or in kind) to be disclosed

- Production entitlements.
- Taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes.
- Royalties.
- Dividends.
- Signature, discovery and production bonuses.
- License fees, rental fees, entry fees and other considerations for licenses and/or concessions.
- Payments for infrastructure improvements.

06

# US proposal on Public Country-by-Country Reporting



# U.S. Public CbyC Reporting proposal: Disclosure of tax havens and offshoring act

Two separate proposals have been introduced over the last several years:

- Disclosure of Tax Havens and Offshoring Act
- Stop Tax Haven Abuse Act



Closely aligned with BEPS Action 13



Information on a country-by-country basis presented in an **aggregated or consolidated** form

Key public information: revenue (with both related and unrelated parties), PBIT, tax paid/accrued, stated capital, accumulated earnings, full time employees and tangible assets



SEC registrants would be required to publicly disclose online their CbyC Reports

## State of play

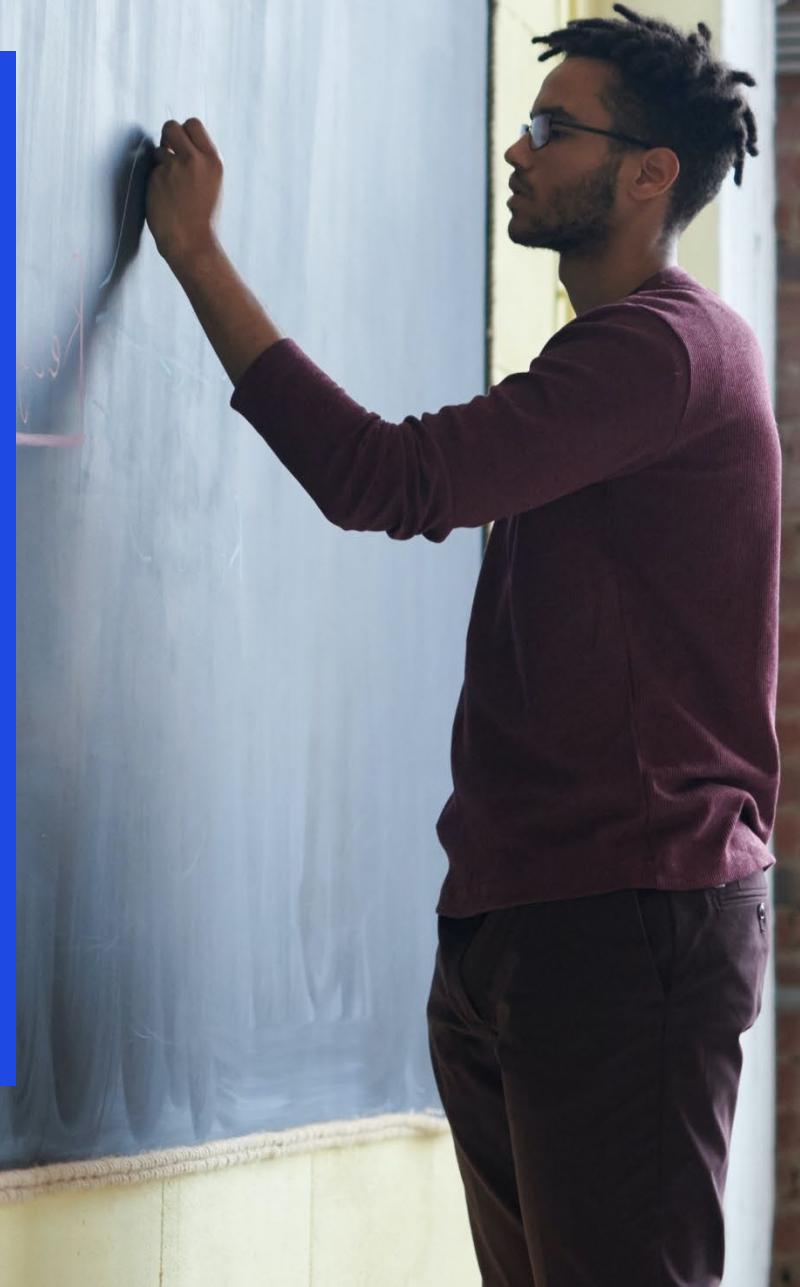
Bicameral legislation reintroduced on May 11, 2021 and passed by the House of Representatives on June 16, 2021

## Next steps

- Bill must be considered and passed by the Senate and signed by the President to be adopted.
- At this time, it seems unlikely that the Bill will get signed into law in the immediate future.

07

# FASB Income Taxes disclosure proposal



# FASB income taxes disclosure proposal



## Highlights and Status

On March 15, 2023, the Financial Accounting Standard Board (FASB) released a proposal that would require entities to disclose more information about the income taxes they incur around the globe.

The proposed amendments would, in part, require entities to disclose:

- For public business entities, a tabular effective tax rate reconciliation, broken out into specific categories with certain reconciling items above a 5% threshold further broken out by nature and/or jurisdiction.
- For other entities, the nature and effect of significant differences between the statutory tax rate and the effective tax rate by specific categories of reconciling items, including individual jurisdictions.
- Income taxes paid (net of refunds received), broken out between federal, state and foreign; and net amounts paid to an individual jurisdiction that equals or exceeds 5% of the total.

If adopted, the proposed amendments would be applied retrospectively to all prior periods presented in the financial statements.



## Next Step

A consultation period runs until May 30, 2023.

FASB is expected to deliberate issues identified in submitted comments and then determine whether it should proceed with the issuance of a final rule. While the timing is uncertain, it is possible a final rule could be issued before the end of 2023.

08

# Dodd Frank Act: Section 1504





# Dodd Frank Act: Section 1504

## Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd- Frank Act) was signed into law by President Obama on July 21, 2010 and primarily focuses on financial regulatory reform.

Section 1504 of the Act concerns the reporting of financial payments to governments and government agencies made for the purpose of developing oil, gas and mineral reserves. The intent of Section 1504 is to help combat global corruption and empower citizens of resource-rich countries to hold their governments accountable for the wealth generated by those resources, by making resource extraction payments more transparent.

Section 1504 requires extractive companies listed on U.S. stock exchanges to disclose, in an annual report, payments made to governments for oil, gas and mining.



# Dodd Frank Act: Section 1504

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## Status

The rules were first adopted by the SEC in August 2012, but were subsequently challenged in court and then vacated by the U.S. District Court for the District of Columbia in July 2013 on two grounds. First, the SEC misread the statute to require the public filing of the payments disclosure to be made by issuers. Second, the SEC's failure to include an exemption in the 2012 Rules for countries that prohibit payment disclosure was "arbitrary and capricious".

In September 2014, Oxfam America filed a suit to compel the SEC to adopt new rules. Discussions have continued between the SEC and industry representatives, and revised regulations were published by the SEC on December 11, 2015. The SEC adopted the proposed regulations as final in June 2016 and the final rule and form amendment were effective 26 September 2016. However, the revised rules were disapproved by a joint resolution of Congress pursuant to the Congressional Review Act (CRA) in 2017.

On December 16, 2020 the SEC adopted a third set of rules implementing Section 1504. The rules are intended both (1) to achieve the statutory objective of increasing the transparency of payments to governments for the purpose of the commercial development of their oil, natural gas, and minerals and (2) to comply with the CRA. The adopted rules will require a domestic or foreign reporting issuer to disclose payments made by the issuer or a subsidiary or entity controlled by the issuer to the U.S. federal government or a foreign government if the issuer engages in the commercial development of oil, natural gas, or minerals.

The final and amended rules from 2020 are effective March 16, 2021, and require compliance after two-year transition period.

On March 24, 2022, a bill to amend the Dodd Frank Act and repeal certain provisions requiring non-material disclosure was introduced in the U.S. Senate. At this time, however, the bills passage into law seems unlikely.

# Dodd Frank Act: Section 1504

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## Highlights

The final rules will, among other things:

- Require public disclosure of company-specific, project-level payment information;
- Define the term “project” to require disclosure at the national and major subnational political jurisdiction, as opposed to the contract, level, recognizing that more granular contract-level disclosure could be used to satisfy the rule;
- Add two new conditional exemptions for situations in which a foreign law or a pre-existing contract prohibits the required disclosure;
- Add a conditional exemption for smaller reporting companies and emerging growth companies (but limit exemption to companies not subject to an alternative reporting regime, which has been deemed by the commission to require disclosure that satisfies the transparency objectives of section 13(q));
- Define “control” to exclude entities or operations that an issuer only proportionately consolidates;
- Limit the liability for the required disclosure by deeming the payment information to be furnished to, but not filed with, the commission;
- Add relief for issuers that have recently completed their U.S. Initial public offerings; and
- Extend the deadline for furnishing the payment disclosures.

# Dodd Frank Act: Section 1504

## Who does it affect?

Any company that is engaged in the commercial development of oil, natural gas, or minerals, and is required to file annual reports with the Securities and Exchange Commission (SEC) i.e., 10-K, 20-F or 40-F.

This includes a subsidiary of that company, or an entity under the control of the company.

## When?

Annual deadline requires an issuer to submit Form SD no later than 270 days following the end of its most recently completed fiscal year.

## What does it require?

Affected companies are required to submit annually their global payments to governments covering:

- The type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas or minerals, as well as the currency used.
- The type and total amount of such payments made to each government.

# Dodd Frank Act: Section 1504



## Disclosure requirements

An annual report must be filed on Form SD with the SEC, in XBRL format using specified electronic tagging as defined by the SEC.

- De-minimis reporting requirement of USD 100,000 for one payment or a series of payments.
- The total payments to each government.
- The total amount of payments made per project and business segment.
- The payment disclosure must be made on a cash basis instead of an accrual basis.
- There is no audit requirement for the payment information.



## Reporting requirements

### Payments to be disclosed

- Taxes levied on corporate profits, corporate income, and production, but will not be required to disclose payments for taxes levied on consumption, such as VAT, personal income taxes, or sales taxes.
- Royalties (including unit-based, value-based, and profit-based), fees (such as; license, rental, and entry) and bonuses (including signature, discovery, and production bonuses).
- Dividends.
- Payments for infrastructure improvements.
- Community and social responsibility payments.
- Payments in kind must be reported at cost, or if not possible, at fair market value (e.g., production entitlement payments and infrastructure payments).

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# Extractive Industries Transparency Initiative (EITI)



# Extractive Industries Transparency Initiative (EITI)

## Introduction

The Extractive Industries Transparency Initiative (EITI) is a voluntary initiative launched in 2002, promoting public awareness of how countries manage their oil, gas and mineral resources and is widely viewed as the driver for global transparency for improving governance of natural resources in the extractives industry.

It is an international standard with a flexible methodology that is voluntarily entered into by governments in order to reconcile payments between the parties in developing nations. It is developed and overseen by a coalition of governments, companies, civil society, investors and international organizations.

As of December 2022, 57 countries implemented the EITI standard. Over 60 of the world's largest oil, gas and mining companies, 9 civil societies and 15 countries support the EITI.

## Who does it affect?

Governments and extractives industry companies involved in exploration and production of oil, natural gas or minerals.

EITI is signed up voluntarily by countries, but once they sign up it requires that all companies and all government agencies making or receiving material payments participate.

## What does it require?

The framework provides guidance on the disclosure requirements, but it is for the implementing country to define the details.

Companies must report to the government running the EITI country program using the relevant template.

Country governments produce the report.

Reports are analyzed and reconciled by a third party, and then published.

# Extractive Industries Transparency Initiative (EITI)

## Reporting requirements



### Disclosure requirements

- Companies disclose all material payments to government.
- Governments disclose extractive industry revenues.
- Materiality levels are set by the country multi-stakeholder group.
- Contextual information on the industry and country must be provided in the report.
- EITI compliant countries must make the reports publicly available.



### Payments to be disclosed

- The host government's production entitlement (such as profit oil).
- National state-owned company production entitlement.
- Profits taxes.
- Royalties.
- Dividends.
- Bonuses, such as signature, discovery and production bonuses.
- License fees, rental fees, entry fees and other considerations for licenses and/or concessions.
- Any other significant payments and material benefit to government.

The EITI standard has been updated in 2019 and is available on the EITI dedicated [website](#).



A woman with long dark hair, wearing an orange sweater over a white collared shirt, is sitting and smiling while holding a tablet. She is in a meeting setting with other people partially visible. In the background, there is a whiteboard with a line graph on it. The scene is set against a brick wall.

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# Global Reporting Initiative — GRI

# Global Reporting Initiative — GRI

## Introduction

Global Reporting Initiative (GRI) is an independent, international organization that provides businesses and other organizations with the global common language to communicate their impacts and take responsibility for those impacts.

The GRI standards are voluntary. However, certain international organizations (e.g. International Council on Mining and Metals) have included compliance with the GRI standards in the 'performance expectations' of its members.

The GRI Tax Standard (GRI 207) was developed by an independent, multi-stakeholder expert group, in recognition of the vital role that tax contributions have on sustainable development, and in response to widespread stakeholder demands for tax transparency. The standard was launched in December 2019 and is available for download in several key languages.

GRI 207 is the first and only globally applicable public reporting standard for tax transparency. It sets expectations for disclosure of tax payments on a country-by-country basis, alongside tax strategy and governance.

The disclosures in the GRI Standard are designed to help an organization understand and communicate its management approach in relation to tax, and to report its revenue, tax, and business activities on a country-by-country basis.



# Global Reporting Initiative — GRI

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## Status

The GRI Tax Standard is effective for reports or other materials published on or after January 1, 2021. Early adoption was encouraged.

### Who does it affect?

The GRI Tax Standard can be used by an organization of any size, type, sector or geographic location that wants to report on its impacts related to this topic.

### Disclosure requirements

Once a company opts to report in accordance with GRI standards, they are required to make disclosures on all their material topics. These topics are based on their impact on a variety of internal and external stakeholders, financially and otherwise. From a sustainability perspective, tax is always expected to be material regardless of the tax footprint of a group, as taxes are considered to be important to stakeholders.

# Global Reporting Initiative — GRI



This standard includes disclosures on the management approach and topic-specific disclosures. These are set out in the standard as follows:

- **Management approach disclosures** — narrative explanation of how an organization manages a material topic, the associated impacts, and stakeholders' reasonable expectations and interests.
  - **Disclosure 207–1 approach to tax** — description of the approach to tax, including:
    - Whether the organization has a tax strategy and, if so, a link to this strategy if publicly available
    - The governance body or executive-level position within the organization that formally reviews and approves the tax strategy, and the frequency of this review
    - The approach to regulatory compliance
    - How the approach to tax is linked to the business and sustainable development strategies of the organization.

# Global Reporting Initiative — GRI



- **Disclosure 207–2 tax governance, control, and risk management** — a description of the tax governance and control framework, including:
  - The governance body or executive-level position within the organization accountable for compliance with the tax strategy
  - How the approach to tax is embedded within the organization
  - The approach to tax risks, including how risks are identified, managed, and monitored
  - How compliance with the tax governance and control framework is evaluated.
    - A description of the mechanisms for reporting concerns about unethical or unlawful behavior and the organization’s integrity in relation to tax.
    - A description of the assurance process for disclosures on tax and, if applicable, a reference to the assurance report, statement, or opinion.
- **Disclosure 207–3 stakeholder engagement and management of concerns related to tax** — a description of the approach to stakeholder engagement and management of stakeholder concerns related to tax, including:
  - The approach to engagement with tax authorities
  - The approach to public policy advocacy on tax
  - The processes for collecting and considering the views and concerns of stakeholders, including external stakeholders.

# Global Reporting Initiative — GRI



- **Topic-specific disclosures**
  - **Disclosure 207–4 country-by-country reporting — the reporting organization shall report the following information:**
    - All tax jurisdictions where the entities included in the organization’s audited consolidated financial statements, or in the financial information filed on public record, are resident for tax purposes.
    - For each tax jurisdiction reported in disclosure 207–4-a:
      - Names of the resident entities.
      - Primary activities of the organization.
      - Number of employees, and the basis of calculation of this number.
      - Revenues from third-party sales.
      - Revenues from intra-group transactions with other tax jurisdictions.
      - Profit/loss before tax.
      - Tangible assets other than cash and cash equivalents.

# Global Reporting Initiative — GRI

- Corporate income tax paid on a cash basis.
- Corporate income tax accrued on profit/loss.
- Reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax.
- The time period covered by the information reported in disclosure 207–4

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# Australia Public Country-by- Country Reporting





# Australia Public CbyC Reporting

The Australian government announced in the federal budget on October 25, 2022 that it will introduce new public reporting requirements for multinational companies to enhance the tax information they disclose to the public, for income years commencing from July 1, 2023.

The government announced reforms in three areas:

- Large multinationals that are significant global entities (SGE) to prepare for public release of certain tax information on a country-by-country basis and a statement on their approach to taxation, for disclosure by the Australian taxation office (ATO). A SGE is a global parent entity with an annual global income of AUD1 billion or more; or any member of such a global parent entity's group;
- Australian public companies (listed and unlisted) to disclose information on the number of subsidiaries and their country of tax domicile; and
- Tenderers for Australian government contracts worth more than AUD 200,000 to disclose their country of tax domicile (by supplying their ultimate head entity's country of tax residence).

On April 6, 2023, the Australian Treasury has published the related draft legislation.



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# Comparison of data requirements



# Comparison of data requirements

		Action 13 BEPS CbyC	EU Public CbyC Reporting	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504	Global Reporting Initiative
<b>Basic information</b>	Entity name	✓	✓	✓			✓
	Activities	✓	✓	✓			✓
	Geographical location/Tax jurisdiction	✓		✓	✓	✓	
	Project name				✓	✓	
	Receiving government				✓	✓	
<b>Financial data</b>	Revenue	✓	✓	✓			✓
	Profit or loss before tax	✓	✓	✓			✓
	Tangible assets other than cash or cash equivalents	✓					✓
	Stated capital	✓					
	Accumulated earnings	✓	✓				
<b>Tax data</b>	Income taxes paid	✓	✓	✓	✓	✓	✓
	Current Income tax accrual	✓	✓				✓
	Explain the difference between corporate income tax accrued and tax paid						✓
<b>Other data</b>	Public subsidies received			✓			
	Dividends				✓	✓	
	Royalties				✓	✓	
	License fees, rental fees, entry fees				✓	✓	
	Signature, discovery and production bonuses				✓	✓	
	Production entitlements				✓	✓	
	Payments for infrastructure improvements				✓	✓	
<b>People data</b>	Number of employees	✓	✓	✓			✓

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# **Comparison of legislative requirements**



# Comparison of legislative requirements

	OECD BEPS Action 13 CbyC Reporting	EU Public CbyC Reporting	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504	Global Reporting Initiative — GRI
<b>Who is affected</b>	Multinational Enterprises (MNEs) with a consolidated group revenue in excess of EUR 750 million.	MNEs with a consolidated group revenue in excess of EUR750 million which are either EU-parented or have qualifying EU subsidiaries or branches.	CRD IV applies country by country reporting to 'institutions' in the EU. Institutions are defined as credit institutions and investment firms.	Large undertakings and public interest entities incorporated in the EU, active in exploration, prospecting, development and extraction of minerals or oil and gas, or logging of primary forests.  In addition, it will apply to many foreign-resident groups that are listed on an EU stock exchange under the FCA's Disclosure and Transparency Rules.	SEC registered companies engaged in the commercial development of oil, natural gas, or minerals.	Voluntary use by organizations irrespective of size, type, sector or location.
<b>When does it come into effect</b>	The final Action 13 Report regulations was published on October 5, 2015.  The first period in scope is accounting periods beginning on or after January 1, 2016.	Date of entry into force: December 21, 2021. EU Member States have until June 22, 2023 to transpose the Directive into national law. Individual Member States may choose to implement the rules at an earlier date.  The rules will apply 12 months after the transposition deadline, i.e., from the commencement date of the first financial year starting on or after June 22, 2024. For calendar year taxpayers, the first reportable year will be 2025, with the report due by the end of 2026.	Names and activities, turnover and number of employees were initially reported on July 1, 2014 based on most recently available financial statement.  Subsequent full reporting is due by December 31, each year starting from December 31, 2015 relating to the most recently ended accounting period.	Reporting begins for financial years commencing on or after January 1, 2016 at the latest.	The final and amended rules from 2020 are effective March 16, 2021 (and require compliance after two-year transition period).  Annual deadline requires an issuer to submit Form SD no later than 270 days following the end of its most recently completed fiscal year.	Effective for reports or other materials published on or after January 1, 2021.
<b>Threshold</b>	Multinationals with consolidated group revenues of more than EUR750 million (or local equivalent).	Multinationals with consolidated group revenues of more than EUR750 million (or local equivalent).	No threshold.	Payments (singular or series) exceeding EUR 100,000.	Payments (singular or series) exceeding USD 100,000.	"Tax" identified as a material topic.

# Comparison of legislative requirements

	OECD BEPS Action 13 CbyC Reporting	EU Public CbyC Reporting	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504	Global Reporting Initiative — GRI
<b>Data aggregation</b>	<ul style="list-style-type: none"> <li>By country</li> </ul>	<ul style="list-style-type: none"> <li>By country (EU Member States and jurisdictions on the EU list of non-cooperative jurisdictions (Annex 1 or two years on Annex 2)).</li> <li>Aggregated on single line for all other territories.</li> </ul>	<ul style="list-style-type: none"> <li>By country</li> <li>By institution</li> </ul>	<ul style="list-style-type: none"> <li>By country</li> <li>By project</li> <li>By government</li> </ul>	<ul style="list-style-type: none"> <li>By country</li> <li>By project</li> <li>By government</li> </ul>	<ul style="list-style-type: none"> <li>By country</li> </ul>
<b>Format of report and audit requirement</b>	<p>Set template format separate from tax return and accounts.</p> <p>Electronic filing likely using XML.</p> <p>No audit requirement based on OECD recommendations.</p>	<p>Disclosure on company website(s) and country's trade register. Common form to be designed and published by the Commission.</p> <p>Auditor to confirm that required data has been published, and published in the correct places.</p>	<p>In practice, this has been on institutions websites, with financial statements stating how the requirement has been met.</p> <p>Audit requirement.</p>	<p>Part of a company's annual financial reporting obligations and shall be published as laid down by the laws of each Member State.</p> <p>Audit requirements will be dependent on the Member State laws.</p>	<p>Form SD — Electronic filing using XBRL.</p> <p>No audit requirement.</p>	<p>Not specified.</p>

# Comparison of legislative requirements

	OECD BEPS Action 13 CbyC Reporting	EU Public CbyC Reporting	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504	Global Reporting Initiative — GRI
<b>What needs to be reported</b>	<ul style="list-style-type: none"> <li>• Constituent entities resident in tax jurisdiction</li> <li>• Tax jurisdiction of incorporation if different from tax jurisdiction of residence</li> <li>• Activities by entity</li> <li>• Revenues (split between related party and unrelated party)</li> <li>• Earnings before income tax</li> <li>• Income tax paid (including WHT)</li> <li>• Current income tax charge</li> <li>• Stated capital</li> <li>• Accumulated earnings</li> <li>• Number of employees</li> <li>• Tangible assets other than cash and cash equivalents</li> </ul>	<ul style="list-style-type: none"> <li>• Net Turnover</li> <li>• Profit/(Loss) before tax</li> <li>• Income tax charge</li> <li>• Income tax paid</li> <li>• Accumulated earnings</li> <li>• Number of employees</li> <li>• Activities by country</li> </ul>	<ul style="list-style-type: none"> <li>• Institution name</li> <li>• Country</li> <li>• Nature of activities and geographical location</li> <li>• Tax on profit or loss</li> <li>• Profit or loss before tax</li> <li>• Turnover</li> <li>• Number of employees</li> <li>• Public subsidies received</li> </ul>	<ul style="list-style-type: none"> <li>• Project name</li> <li>• Name of receiving government</li> <li>• Country of receiving government</li> <li>• Taxes levied on income, production or profits</li> <li>• Dividends</li> <li>• Royalties</li> <li>• License fees, rental fees, entry fees</li> <li>• Production entitlements</li> <li>• Signature, discovery and production bonuses</li> <li>• Payments for infrastructure improvements</li> </ul>	<ul style="list-style-type: none"> <li>• Project name</li> <li>• Name of receiving government</li> <li>• Country of receiving government</li> <li>• Taxes levied on income, production or profits</li> <li>• Dividends</li> <li>• Royalties</li> <li>• License fees, rental fees, entry fees</li> <li>• Production entitlements</li> <li>• Signature, discovery and production bonuses</li> <li>• Payments for infrastructure improvements</li> </ul>	<ul style="list-style-type: none"> <li>• Names of the resident entities</li> <li>• Primary activities of the organization</li> <li>• Number of employees, and the basis of calculation of this number</li> <li>• Revenues from third-party sales</li> <li>• Revenues from intra-group transactions with other tax jurisdictions</li> <li>• Profit/loss before tax</li> <li>• Tangible assets other than cash and cash equivalents</li> <li>• Corporate income tax paid on a cash basis</li> <li>• Corporate income tax accrued on profit/loss</li> <li>• Reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax.</li> </ul>

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# KPMG's ESG tax transparency offering





# KPMG's ESG tax transparency offering

The tax transparency journey is different for everyone.

- It will depend on where you currently are, where you want/need to be and the resources available.

## Assess

### ESG tax reviews & benchmarking

Benchmarking can be an efficient way to understand what the business is currently reporting compared to peers or sustainability standards.

- Review existing tax policy
- Maturity assessment and gap analysis of policies and strategies versus tax transparency standards / peers. The **KPMG Tax Transparency Discovery Assessment** or **ESG Tax Assessment** can help here

## Strategise

### ESG tax gap analysis & strategy for improvements

Once the current position is understood, the tax function will need to define its aspirations and formulate a long term strategy for improvement.

- Identify and review tax risks (financial and non-financial) to identify key gaps in the control framework
- Conduct stakeholder assessments related to the identified risks

KPMG's gap analysis tool **Tax Control Room** can help facilitate this service.

## Design

### Design improvements to policies and governance

Refreshing group tax policies, governance procedures and control mechanisms can improve practices to help meet standards

- Update policies and practices in light of identified tax risks
- Harmonise policies/ strategies across geographies / segments of a large group
- Compare refreshed standards against peers and/or best practice disclosures
- Design a communication strategy, ensuring alignment between the tax policy, tax strategy and the sustainability/ESG strategy

## Implement

### Implement improvements to policies and governance

New policies and procedures must be implemented across the group effectively, if they are to showcase improvement and commitment.

- Communicate new policies to leadership and wider business
- Perform controls testing to ensure new processes are adequate to meet relevant governance requirements

## Monitor and report

### Tax transparency reporting: Tax Impact Reporting

Tax transparency disclosures will need to include quantitative and qualitative reporting in line with relevant reporting frameworks.

- Groups will need to decide what to disclose, in line with which standards or principles
- Assess what kind of data collection approach to take, either in-house or using specialist support. KPMG has developed a technology solution, **Tax Footprint Analyzer**, to support clients with tax data extraction
- Determine appropriate reporting format (sustainability report, separate tax transparency report, online, etc.)

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**Sources**



# Sources

## 1 » KPMG Tax Impact Reporting

[Navigating tax transparency - KPMG Global \(home.kpmg\)](https://home.kpmg)

## 2 » OECD BEPS Action Plan 13

[BEPS Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 — 2015 Final Report](#)

[Guidance on the implementation of CbyC Reporting](#)

## 3 » Public CbyC Reporting

[Directive 2021/2101 of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches](#)

## 4 » Capital Requirements Directive IV

[Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms](#)

## 5 » EU Accounting Directive: Chapter 10

[DIRECTIVE 2013/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings](#)

## 6 » Dodd Frank Act Section 1504

[U.S. SEC — Section 1504 Specialized Disclosures](#)

## 7 » Extractive Industries Transparency Initiative (EITI)

[EITI website](#)

## 8 » Global Reporting Initiative — GRI

[GRI website](#)

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# Contacts



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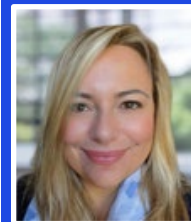
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