

SHOULD CbCR GO PUBLIC? A DEVELOPING COUNTRY'S PERSPECTIVE OF PUBLIC CbCR

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ABSTRAK

Profit shifting is more significant for developing countries since their tax revenue relies heavily on corporate income tax. The introduction of CbCR of the OECD/G20 BEPS Project is perceived to enhance transparency for tax administration, expected to help developing countries overcome this problem. However, using CbCR and its information is subject to various conditions and constraints. Calling for the implementation of public CbCR has been persistent further by non-government organizations (NGOs). Public disclosure is hoped to increase transparency and keep aggressive tax planning behind. Several initiatives have applied public disclosure of CbCR. This paper aims to review the current regime of CbCR in Indonesia. It then studies the existing implementation of public CbCR in the European Union as examples of public CbCR in practice. Further, this study discusses the potential benefits, challenges, and risks of public disclosure of the CbCR from the perspectives of developing countries.

Profit shifting mempunyai dampak yang lebih signifikan bagi negara-negara berkembang karena pendapatan pajak mereka sangat bergantung pada pajak penghasilan badan. Pengenalan CbCR pada OECD/G20 BEPS Project dalam rangka meningkatkan transparansi administrasi perpajakan diharapkan dapat membantu negara-negara berkembang mengatasi masalah ini. Namun, penggunaan CbCR dan informasinya saat ini harus tunduk pada berbagai kondisi dan pembatasan. Seruan untuk implementasi CbCR publik semakin gencar dilakukan oleh lembaga swadaya masyarakat (LSM). Pengungkapan publik diharapkan dapat meningkatkan transparansi dan mencegah perencanaan pajak yang agresif. Beberapa inisiatif telah menerapkan pengungkapan publik CbCR. Paper ini bertujuan untuk meninjau rezim CbCR saat ini di Indonesia, lalu mempelajari implementasi CbCR publik yang ada di Uni Eropa sebagai contoh praktik CbCR publik. Lebih lanjut, penelitian ini membahas potensi manfaat, tantangan, dan risiko pengungkapan CbCR kepada publik dari perspektif negara berkembang.

1. INTRODUCTION

The base of erosion and profit shifting (BEPS) has been a long-standing problem and has become a global issue in international taxation, specifically from multinational enterprises (MNEs) (Rosid & Daholi, 2018). To address this BEPS issue, the Organisation for Economic Co-operation and Development (OECD), supported by G20 countries, has formulated a globally coordinated strategy with 15 Action Plans. The Inclusive Framework was then established to implement this strategy, ensuring that interested countries and jurisdictions participate equally in developing standards on BEPS-related problems as well as evaluating and monitoring the implementation (OECD, 2016). The missions of the Inclusive Framework are to combat tax avoidance, enhance the international tax rules' coherence, and promote a more transparent tax environment (OECD/G20 Inclusive Framework on BEPS).

The Inclusive Framework requires all member countries to implement four minimum standards. One of the minimum standards is BEPS Action 13, which intends to re-examine transfer pricing documentation. BEPS Action 13 standard aims to enhance the existing transfer pricing documentation requirements (Arnold, 2019), enabling tax administration to conduct a high-level assessment of transfer pricing risk. Under BEPS Action 13, MNEs are now required to provide a master file, a local file, and particularly a country-by-country report (CbCR) to the tax authority.

Upon submission of the CbCR to the tax authority, it is shared with the tax authorities of other jurisdictions for the purpose of transfer pricing and BEPS risks assessments, as well for economic and statistical analysis if appropriate (OECD, 2015). However, the mandatory requirement of CbCR has become the most contested part of the BEPS (Owens, 2015). Nevertheless, it has now been broadly accepted, with more than 2,700 bilateral relationships for CbC exchange, and over 130 jurisdictions have introduced legislation imposing CbCR requirements (OECD, 2021).

Transparency at the corporate level is important to prevent BEPS in a globalized economy (Oguttu, 2020). In this way, CbCR is perceived to enhance transparency for tax administration, especially in countries with limited access to high-quality information. It is also expected to improve accountability among multinational companies. However, using CbCR and their information is subject to various conditions and constraints (Hanlon, 2018). CbCR must be obtained and used in a confidential, consistent, and appropriate manner (OECD, 2015).

The implementation of the CbCR requirement is not without challenges, especially for developing countries. It is often difficult for developing countries to effectively engage with these reports due to their

capacity constraints, even though OECD has provided some reports and guidelines. Subsequently, there is also a concern from developing countries about accessing the CbCR information and maximizing its use (Oguttu, 2020). Some scholars argue that the restricted approach of CbCR information impacts the ability of developing countries to access the reports. Furthermore, this approach could hamper MNEs' transparency obligations and hinder the BEPS Project's mission to improve a more transparent tax environment. Making CbCR publicly available is believed to be the most effective way to ensure corporate transparency (Oguttu, 2020).

Whether CbCR should be made public has been a tax debate for years (Chand & Picariello, 2021). The OECD is not the first one that introduced the idea of CbCR. In the 1970s, the United Nations was the first to propose tax policy initiatives to reform corporate tax systems through the international regulation of accounting of MNEs by advocating public CbC reporting of their economic operations. The proposal intended to protect the developing countries' interests by safeguarding their tax bases. However, with some rejections and lobbying by MNEs, the proposal failed to receive political support from developed countries (Oguttu, 2020). Subsequently, having realized the possible benefit of enhancing corporates' transparency, the developed countries, through OECD, supported the implementation of BEPS Action 13, which includes the CbCR requirements. Nevertheless, rather than make it a public disclosure, CbCR under BEPS Action 13 is a private disclosure to tax authorities only.

Calling for the implementation of public CbCR has been persistent further by the non-government organizations (NGOs) (Haines, 2020). Public disclosure is hoped to increase transparency and keep aggressive tax planning behind (Wöhrer, 2017). Several initiatives have applied public disclosure of CbCR. For instance, the implementation of CbCR requirements for companies in the logging and extractive industries as stipulated in EU Directive 2013/34/EU1 and EU Directive 2013/50/EU, as well as public CbCR in the banking sectors. Moreover, the EU recently introduced mandatory public disclosures of CbCR for all business sectors in December 2021. The move to greater transparency seems highly unavoidable in the near future.

From developing countries' perspective, profit shifting is more significant because their tax revenue relies heavily on corporate income tax (Crivelli, Mooij & Keen, 2015). Therefore, CbCR is expected to help developing countries overcome this problem. However, as explained earlier, the restricted approach to private disclosure of CbCR limits their access to it. Therefore, public disclosure of CbCR could be the most

effective and fair way to ensure equal access for all tax administrations (Financial Transparency, 2016).

To this point, this paper discusses the possible implementation of making CbCR information available to the public from developing countries' perspectives, particularly Indonesia. This study focused on Indonesia because as a developing country, Indonesia is significantly affected by profit shifting.¹ However, it is difficult to estimate the precise amount of revenue lost to profit shifting by MNEs in Indonesia (Mulyani, 2017). In 2016, the Minister of Finance claimed that IDR 500 trillion in income tax was lost due to almost 2,000 foreign affiliates of MNEs not paying taxes during a ten-year period (Prasetyo, 2016). Likewise, Kristiaji of the Danny Darussalam Tax Center noted that from 2004 to 2013, there were 1,452 to 2,794 foreign affiliates of MNEs recorded losses on their annual tax returns from various factors, including profit shifting (Mulyani, 2017).

Indonesia has responded positively to the BEPS Project since its initial stages to combat profit shifting (Rosid & Daholi, 2018). Indonesia has, for instance, expressed its interest in becoming an associate member of the BEPS Project at the early stage of the initiative and agreed to facilitate an OECD study of BEPS (Arifin, 2014). As a member of the G20, Indonesia has shown its strong commitment to implementing the OECD/G20 BEPS Project. Subsequently, Indonesia is one of the first developing countries that has joined the Inclusive Framework and has adopted all BEPS Actions, including the minimum standards. However, although Indonesia actively adopted all BEPS actions, its low tax ratio still demonstrates that Indonesia is still experiencing BEPS problems.² The greater transparency offered by public CbCR would benefit Indonesia in combatting profit shifting.

2. LITERATURE REVIEW

2.1 BEPS Action 13 Country-by-Country Reporting

The BEPS Action 13 requires multinational enterprises (MNEs) to prepare country-by-country reports (CbCR) as part of their transfer pricing documentation compliance. CbCR involves the disclosure of the company's tax figures and other financial data on a country-by-country basis for all jurisdictions in which it operates. The report is then shared with these jurisdictions' tax authority for the purpose of transfer pricing and BEPS risk assessments as well as for economic and statistical analysis if appropriate (OECD, 2015). Indeed, this became the most contested part of the BEPS as it raised the issues of compliance cost and the confidentiality for the taxpayers (Owens, 2015). The OECD has provided

guidance to support MNEs implementation in CbCR which includes what must be reported and where to file and exchange the information. The CbCR standard according to BEPS Action 13 consists of three primary aspects that must be met by each jurisdiction.

1. Domestic legal and administrative framework;
2. Exchange of information framework;
3. Confidentiality and appropriate use of CbCR.

Confidentiality, consistency and appropriate use are necessary conditions underpinning the obtaining and use of CbCR (paragraph 56 of BEPS Action 13 Final Report). Article 6 of the OECD Model legislation related to CbCR provides the use and confidentiality of CbCR information under which only for the purposes of assessing high-level transfer pricing risks and other BEPS-related risks, as well as economic and statistical analysis where appropriate. It can also be used for assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules. However, the information cannot be used as a substitute for a detailed transfer pricing analysis, as conclusive evidence on the appropriateness of transfer prices, or as a basis for making adjustments to taxpayer income based upon an allocation formula. In term of confidentiality, Article 6 states that the information for CbCR should be preserved at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

2.2 Public Disclosure of Country-by-Country Reporting Initiatives

Currently, various regimes require mandatory public disclosure of tax information for MNEs on a country-by-country basis, most of which are industry-specific. The regimes studied in this paper include the banking, extractive, and logging industries. In addition, the newly public CbCR Directive applicable to all sectors of MNEs in the EU is also examined. This section discusses the objective of the regimes, focusing on the public disclosure component, the regimes' transparency outcomes, and their impact on tax avoidance.

2.2.1 Capital Requirement Directive (CRD) IV (Banking Sectors)

Following the global economic crisis of 2008, the EU implemented a series of policies to deal with macroeconomic activity, including the adoption of Article 89 of the EU Directive 2013/36/EU. This regulation was part of a legislative package (Capital Requirement Directive IV/CRD IV) in the Basel III regulatory framework, which was designed to fortify the capital requirement of banks (Overesch & Wolff, 2021).

¹ Indonesia generates around 30% of its tax revenues from corporate income tax in 2021 (source: Directorate General of Taxes).

² With a 10.1% tax ratio in 2020, Indonesia placed among the lowest in the region (OECD, 2022).

This directive is adopted to give stakeholders a better understanding of financial group structures, their activities, geographical presence, and tax payments to where actual business activities occur. Article 89 CRD IV specifically requires all bank and investment firms to disclose an annual report of their key financial and tax data on a country-by-country basis for each country in which they have an establishment. The report includes the following information on a consolidated basis:

- Name, activities, and geographical location;
- Turnover;
- Number of full-time employees;
- Profit and loss before tax;
- Tax on profit or loss;
- Public subsidies received.

The information above shall be audited and then published as an annexe of the financial statements or, if applicable, to the group's consolidated financial statements. The reporting requirements were enacted on 1 January 2015, with the first disclosure occurring in 2019.

Overech and Wolff (2021) suggest that this mandatory introduction of a public CbCR in CRD IV is considered a pioneer regulation of public CbCR in the EU banking sector. Furthermore, CRD IV represents one of the best opportunities for assessing transparency as anti-tax avoidance measures for the mandatory public disclosure requirement (Overesch & Wolff, 2021).

Several studies have been conducted to review the application of this Article 89 of CRD IV. Joshi et al. argue that CRD IV CbCR can deter tax-motivated income shifting but does not significantly impact the banks' overall tax avoidance (Joshi, Outsly & Persson, 2020). Conversely, Sabljic et al. found a decreased aggressive tax avoidance by the EU multinational banks in the post-implementation period of CRD IV (2014-2018) (Sabljic, Mõrec & Vasić, 2021). Overreach and Wolff studied the impact of the mandatory financial CbCR on EU banks' tax avoidance. They found that public information on international company structures correlated with the potential for international tax avoidance. Their finding supports the argument that CbCR can serve as an additional policy instrument to curb corporate tax avoidance only when the reporting exposes the firms' tax sheltering activities to public scrutiny. Thus, transparency plays an important role in combating MNEs' tax avoidance (Overesch & Wolff, 2021).

Dutt et al. studied the reporting behaviour of European banks based on CRD IV CbCR. They found that there are inconsistencies in the reporting that make the data difficult to interpret and compare (Dutt, Nicolay & Spengel, 2021). CRD IV CbCR disclosures had a primary deficiency: they could not reliably assess if financial institutions had correctly allocated income to

the tax jurisdictions where they operate. The BEPS CbCR should have a similar problem. However, it could be concluded that the EU CRD IV article suggests that improved public disclosure and tax transparency can discourage income shifting (Murphy, Jansky & Shah, 2019).

2.2.2 Extractive and Logging Industries

In 2013, the European Union (EU) introduced Directive 2013/34/EU1 (referred to as the Accounting Directive) to stipulate the CbCR requirements for logging and extractive industries of their payment to the government. Moreover, similar reporting requirements were also introduced in the same year by Directive 2013/50/EU2 (the Transparency Directive) for companies in the logging and extractive industries whose securities are admitted to trading on a regulated market (European Commission, 2018).

Through these two directives, mining and forestry companies are required to report the taxes, royalties, and bonuses they pay to the government worldwide. This report must be broken down by country and project if the payments are attributed to a specific project. Listed below are the types of payments that companies are required to report under these directives: production entitlements; taxes on production, income, or profit; dividends; royalties; signature, discovery, and production bonuses; license, rental, entry, and other fees related to licensing or concession; and payment for infrastructure improvements.

The objective of the Directives is to promote public scrutiny of how governments manage natural resource revenue to combat corruption. Both directives are designed to increase the amount of information reported on MNEs active in the extractive and logging industries. Furthermore, the goal is to inform the public to hold the governments accountable for receiving payments from MNEs for exploiting natural resources, including primary forests, minerals, oil, and gas. In addition, such reporting will also assist governments of resource-rich countries in implementing the Extractive Industries Transparency Initiative (EITI).

There is a finding that the implementation of the directives resulted in a considerable amount of reporting from the extraction sector but only a low rate of reporting from the logging companies. The explanation could be that because the directive's scope is restrictive and only targets primary forests. There are many cases when the logging companies subcontract their operation to local entities, which is not a subject of the reporting requirement. The study also found that there is limited monitoring of the authorities of the taxpayer's compliance with the reporting requirements. Academics and civil society organizations focused on transparency and

accountability mostly monitor the issues. The review also found civil society's low public awareness of the CbCR in most countries. Overall, the reporting requirements appear to have succeeded in increasing the transparency of payments made by companies to governments for natural resource extraction (European Commission, 2018).

2.2.3 EU Public CbCR Directive for All Sectors

After a lengthy discussion and procedure, the EU has finally adopted public disclosure of CbCR. Directive (EU) 2021/2101 was published in the Official Journal on 1 December 2021. Through this legislation, the EU has officially implemented CbCR public disclosure for all sectors. The Directive's adoption is the culmination of a prolonged maturation process within the EU. Initially, the European Commission released its ideas for CbCR's public disclosure in 2016, based on previous sector-specific regimes for extractives and financial services. Although the delay was due more to technical debates over the Directive's legal foundation than to concerns over transparency, there was widespread scepticism that the ideas would ever be accepted. However, a renewed effort under the Portuguese Presidency in 2021 put an end to the legal issues. It was then quickly followed by political and technical consensus within the EU (KPMG, 2021).

This Directive requires the member states of the EU to impose the rules into their domestic regulation no later than 22 June 2023 and will be applied, at the latest, to fiscal years beginning on or after 1 July 2024. The first reportable year will thus be 2025, with the report due in 2026.

This directive requires in-scope companies to publish a public CbCR, which includes income tax regulation to each EU member state where the company is present. The company also needs to publish this information on its website in the interest of investors, civil society, and the general public (Netjes & Freyer, 2022). With these regulations, the aim of CbCR has evolved from assessing tax risks to enabling public scrutiny.

The Directive targets are large MNE groups with total consolidated net revenue of at least EUR 750 million in the last two financial years. Where the parent companies meet the EUR 750 million income level, EU branches of undertakings operating outside the EU may also be subject to reporting obligations. Further, when a multinational group's parent is based outside the EU, a reporting requirement arises when an EU subsidiary is classified as a "medium" or "large" business under the EU Accounting Directive 2013/34/EU. In general, this implies that a multinational firm will be obliged to publish a public CbCR report if it has an EU subsidiary that meets at least two of the three conditions: total balance sheet EUR 4 million; net turnover EUR 8 million; or the

average number of employees over the fiscal year at least 50. An exception applies if the group has just one EU Member State presence or if the enterprise is already subject to equivalent reporting requirements (Tully, O'Sullivan & du Berry, 2021).

With the aim to increase tax transparency, the new initiative requires MNEs to publish specific information about financials, taxes, and functions by EU countries. The groups will need to prepare and submit information to the trade registries of each relevant EU Member State and publish it on their websites. The data to be reported should include information of the business activities, net turnover (including turnover with affiliated companies), profit/loss before income taxes, income taxes paid and accrued, cumulative earnings, and the number of permanent employees. The data should be provided separately for each EU member state, each EU non-cooperative jurisdiction, each qualifying EU grey listed jurisdictions, and the rest of the world as an aggregate. A 'safeguard clause' is also available to allow companies to postpone disclosing some information for up to five years (KPMG, 2021).

According to the Directive, MNEs should submit annual reports within 12 months after the end of the group's fiscal year. The Directive does not specify penalties for late or non-submission. Instead, member states are free to set their own penalties. According to the Directive, the report must be freely accessible to the public for at least five years.

Several criticisms are present for the Public CbCR Directive. Some scholars are concerned about legal certainty, issues with its implementation, and effectiveness in achieving its *ratio legis* (Loureiro, 2022). There is also an argument that the information overflow poses no benefit to anyone. The OECD CbCR already provides tax authorities with more detailed tax information, and public reporting is merely a compliance burden for firms. Additionally, public CbCR only minimally improves information asymmetries between MNEs and the general public (Lagarden et al, 2020). According to some, the Public CbCR Directive is not an effective method to combat profit shifting due to high-level data and the fact that companies do not disclose the instruments they exploit to shift profits (Spengel, 2018). Müller et al. demonstrate a substantial decline in the share prices of impacted European enterprises. Their results indicate that the majority of capital market participants believe that the costs of transparency exceed any possible advantages. Disclosure of sensitive company information to rivals may incur reputational and proprietary expenses. Therefore, they suggest that public reporting in the European Union might lead to competitive disadvantages compared to overseas competitors (Müller, Schoenrock & Spengel, 2022).

The Public CbCR Directive is scheduled for review by 22 June 2027 to evaluate its impact and effectiveness. The scopes include:

- whether it is reasonable to expand the reporting requirement to smaller businesses
- the effects of providing data for third-country jurisdictions to be given on an aggregated basis
- the safeguard operation (Matheson, 2021).

3. RESEARCH METHODOLOGY

This paper is a qualitative study that uses literature reviews and documentation as its methodologies. This paper examines the relevant literature and tax provisions that underlie country-by-country reporting. The resources under study include laws, regulations, and policy documents on the topic from the OECD, Indonesia, European Union, and other jurisdictions. It also includes academic literature (books, journals, and articles), policy strategies, and plans of the government relating directly to the study's objective.

The study intends to answer the following questions:

1. What is Indonesia's current regime for the implementation of CbCR?
2. Should CbCR go public?

This study aims to review the existing implementation of CbCR in Indonesia. The paper then presents the existing implementation of public CbCR in the European Union to study the public CbCR in practice. Further, this study argues whether Indonesia should publicise the information from CbCR by discussing the potential benefits, challenges, and risks of public disclosure of the CbCR.

4. DISCUSSION

4.1 The Current Regime of Country-by-Country Reporting in Indonesia

The OECD formally introduced the BEPS Action 13 Final Report in 2015. However, Indonesia had just set the requirements of the CbCR the following year through Minister of Finance Regulation Number 213/PMK.03/2016 (PMK-213/2016) enacted on 30 December 2016. Unfortunately, Indonesia did not consult with the industry before introducing CbCR legislation, which is considered a missed opportunity to prevent subsequent clarifications once the regulation is in place (Falcão & Yaffar, 2020).

As the basis of BEPS Action 13 implementation, Indonesia has primary and secondary laws. The primary law consists of Article 28, paragraph 11 of Law Number 6, the Year 1983 General Provisions and Tax Procedures Law (lastly amended by Law Number 16 of 2009). This provision stipulates a bookkeeping obligation for the taxpayer and an obligation to retain the documents for ten years, whereas a government regulation will

provide further regulation (Article 48). In this way, Government Regulation Number 74 of 2011 posed as the secondary law. Article 10, paragraph 3 of the regulation mandates the Minister of Finance to regulate the procedures to retain documents (including transfer pricing documentation and CbCR) where PMK-213/2016 serves this function.

Under PMK-213/2016, Indonesia adopts a three-tiered structure report regarding transfer pricing documentation (TP Doc) which consists of (1) a master file: that contains general information on companies' business activities and the transfer pricing regulation which are relevant for all MNE group members; (2) local file: describes specific information of business activities, financial information, and related party transactions conducted by the local taxpayer as part of MNE group; and (3) country-by-country reports (CbCR), contains standardized information that identifies MNE income and taxes paid globally as well as economic indicators in the countries where they operate. With this three-tier approach, MNEs are forced to report their transfer pricing strategies and structure to DGT, allowing the tax authority to gain better insight into the company's overall operations and strategy (Hanlon, 2018). The TP Doc in Indonesia is managed by the Directorate General of Taxes (DGT) (Article 12 PMK-213/2016).

PMK-213/216 stipulates that taxpayers who conduct related-party transactions and meet the following criteria are obliged to prepare the master file and a local file:

- a. Annual gross turnover in the preceding fiscal year is more than IDR 50 billion; or
- b. Turnover is less than IDR 50 billion but:
 - Have transactions of tangible goods of more than IDR 20 billion; or
 - Have a single transaction of payment of interest, royalty, fees, services, or similar transactions for over IDR 5 billion.
- c. Having transactions with affiliates located in a country or jurisdiction with a lower corporate income tax rate than Indonesia (25%).

The IDR 50 million threshold is set to exempt small and medium-sized enterprises (SMEs) from TP Doc obligation since it requires numerous sources and costs. Further, point c is in place to prevent profit shifting to a lower tax jurisdiction as no de minimis rule applies in Indonesia to such transactions (Astuti, 2017).

In accordance with CbCR requirements, the government of Indonesia issued Director General of Taxes Regulation Number 29/PJ/2017 (PER-29/2017) on 29 December 2017. Under PMK-213/2016, MNEs are required to submit annual CbCR to tax administration through their Ultimate Parent Entities (UPE). Article 1 (8) PMK-213 provides the criteria of a parent entity: an entity that controls other members of

the business group directly or indirectly and has an obligation to prepare consolidated financial statements according to Indonesian financial accounting standard (Pernyataan Standar Akuntansi Keuangan/PSAK) or regulations that are binding to public companies in Indonesian stock exchange (IDX). This definition is narrower than the definition provided in the OECD BEPS Action 13, which gives the additional condition that there is no other entity within the group that owns the parent entity as described above (OECD, 2018). However, PER-29/2017 gives additional criteria that a parent entity as UPE shall not be owned directly or indirectly by another entity within the group or is owned directly or indirectly by another entity which is not required to consolidate the Financial Statement of the parent entity (Article 2(3) and 2(1c)).

Under PMK-213/2016 and PER/29/2017, an Indonesian tax resident as a parent of a group with a consolidated gross turnover of at least IDR 11 trillion (approximately EUR 750 million in 2016) must submit a CbCR together with their annual tax return. The submission of a CbCR by a parent entity is called a primary filing. Generally, only the parent entity is required to provide a CbCR. However, in a condition where the parent entity is located in a foreign jurisdiction, the subsidiary in Indonesia must submit the CbCR if the jurisdiction of the parent entity meets the following criteria (the local filing):

- a. Does not require the submission of CbCR;
- b. Does not have an exchange of information agreement with the Indonesian government, including tax treaty, tax information exchange agreement (TIEA), and MCAA;
- c. Has an agreement, but the Indonesian government cannot obtain the CbCR because it does not have a Qualitative Competent Authority Agreement (QCAA) with Indonesia (Article 2(1) PER-39/2017).

This regulation follows the secondary filing mechanism in BEPS Action 13. However, as mentioned in the final report of BEPS Action 13, a surrogate filing mechanism is not used in PMK 213/2016. Instead, the regulation stipulates that the subsidiary in Indonesia will be responsible for preparing a CbCR in the absence of a CbCR received from the parent company (Astuti, 2017).

PMK-213/2016 provides a list of information that should be submitted in CbCR, which aligns with BEPS Action 13, as follow: the allocation of income, tax paid, business activities of each group entity in each country or jurisdiction, a list of group entities, and the main activity conducted in each jurisdiction (Article 10 (1) PMK-213/2016). The constituent entities that should be included and reported in CbCR are:

- The ultimate parent entity.

- Each group member included the parent entity's consolidated financial report for financial reporting.
- Other group members are not included in the consolidated financial report but are considered relevant based on size and materiality.
- Permanent establishments (Rosdina, Tambunan & Irianto, 2019).

The requirement to file a CbCR in Indonesia begins on the period starting or after 1 January 2016. In addition, PMK-213 requires the use of Bahasa Indonesia in TP Doc, including CbCR (Article 11 PMK-213/2016). Therefore, companies that are allowed to use a foreign language in their bookkeeping must provide a translation of their TP Doc. Subsequently, the Master File, obtained from an overseas parent entity, must be translated into Bahasa Indonesia. However, there is no obligation to have the documents translated by a qualified translator (Astuti, 2017).

For the CbCR requirement, each member of the MNE shall submit a notification via the DGT online system, which is a statement of whether it is obliged to submit CbCR. Besides CbCR submission and notification, PMK-213/2016 and PER-29/2017 also require the reporting entity (UPE) to fill CbCR Worksheet. The Worksheet integrates two standardized CbCR forms, consisting of the financial information and the list of MNEs' members and activities. Besides CbCR, where the financial information is provided per country, CbCR Worksheet requires detailed financial information per entity. This regulation intends to help UPEs prepare CbCR; thus, it only applies to UPEs located in Indonesia. However, as the Worksheet is not part of OECD BEPS Action 13 CbCR, it will not be exchanged with other competent tax authorities (Wahyuni, Anggoro & Sirait, 2019).

According to PMK-213/2016, in-scope taxpayers should prepare their CbCR from the fiscal year of 2016. In 12 months after the end of the fiscal year, the CbCR must be available for submission along with the following year's tax return. For example, for the fiscal year of January to December 2020, the CbCR should be available in December 2021 and reported to DGT with the 2021 tax return due on 30 April 2022. However, PMK-213/2016 and PER-29/2017 do not specifically state the consequences or penalties of failure to submit the CbCR documentation within the required timeframe. Therefore, penalties under General Tax Provisions and Procedures Law (Undang-Undang Ketentuan Umum dan Tata Cara Perpajakan/KUP Law) related to bookkeeping obligations apply.

Several countries apply penalties for failing the obligation of submitting CbCR documentation to make non-compliance more costly than compliance. The penalties imposed vary, including a percentage of tax payable, a fixed amount of penalty, or instead giving

incentives to comply. In Indonesia, PMK-213/2016 states that failing to submit CbCR would make the submitted tax return incomplete and unfiled. Additionally, Article 3 (1) of KUP Law provides a taxpayer's obligation to file an annual tax return correctly, completely, and clearly. Failure to comply with this obligation may result in an administrative penalty and even a criminal sanction. Thus, with respect to KUP Law, failing to submit CbCR may result in an administrative fine of IDR 1 million and a penalty of 50% to 100% of the unpaid income tax (Article 13 KUP Law). In some cases, criminal sanctions may be imposed with a penalty between 200% and 400% of the tax owed and a maximum jail sentence of 6 years (Article 39 KUP Law).

Under Indonesian tax law, penalties are regulated under KUP Law rather than in lower legislations. Hence, PMK-213/2016 cannot provide a specific penalty for failing to fulfil its obligation since it would require amending the Law (Astuti, 2017). In practice, abstaining from the penalty of failing to submit the CbCR obligation could raise the issue of compliance, where there is low compliance with CbC reporting. In Indonesia, the obligation of submitting CbCR is purely based on self-assessment. Because DGT does not have the consolidated gross turnover information, only the taxpayers know whether they are obliged to submit CbCR or not through an assessment when submitting a notification, resulting in low compliance of CbCR submission.

The CbCR is shared automatically by the filling jurisdiction's tax authority with other foreign tax authorities based on Competent Authority agreements. Indonesia has signed a Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) on 26 January 2016, containing agreements to exchange CbC Reports with other countries.³ The agreements include:

- **Bilateral tax treaties**
Indonesia currently has a bilateral tax treaty with 71 jurisdictions around the world.
- **Tax Information Exchange Agreements**
Indonesia has signed TIEA with five jurisdictions, specifically in 2011 with Jersey, Guernsey, Isle of Man, and Bermuda; in 2013 with San Marino; and in 2015 with the Bahamas.
- **Convention on Mutual Administrative Assistance in Tax Matters**
Indonesia currently has conventions with 128 partner jurisdictions worldwide (DGT Annual Report 2020).

The CbCR submitted by the taxpayer to the DGT will be exchanged through automatic exchange of

information with the tax authorities of the country or jurisdiction that has a Qualifying Competent Authority Agreement (QCAA) with Indonesia. As of 1 November 2021, Indonesia currently has QCAA with 81 jurisdictions and the exchange of information is carried out by the Director of International Taxation of DGT (Article 7 PER-29/2017).

In line with the BEPS Action 13 recommendation related to the use and confidentiality of CbCR information, PMK-213/2016 in Article 10 (6) provides that CbCR information can only be used to assess high-level transfer pricing risks and other BEPS-related risks, as well as economic and statistical analysis if appropriate. It can also be used for assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules. However, the information cannot be used as a substitute for a detailed transfer pricing analysis, as evidence of transfer prices' appropriateness, or as a basis for making adjustments to taxpayer income based upon an allocation formula. In terms of confidentiality, Article 6 explains that the information for CbCR must be preserved in a way that is at least as effective as if given to it as the provisions in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD, 2018).

The OECD/G20 Inclusive Framework has reviewed the implementation of BEPS Action 13 in Indonesia. Phase 1 review was conducted in 2017 to review the mandatory implementation of CbCR into Indonesia's domestic legal and administrative framework, which Indonesia has met all the requirements (OECD, 2018). Phase 2 review of BEPS Action 13 was conducted in 2017/2018, resulting in Indonesia meeting all the terms of reference related to the appropriate use of CbCR without any recommendations (OECD, 2019). Indonesia is also one country that has been ready and successfully done the first CbCR exchange in June 2017. Further, in Phase 3 review of 2018/2019 and Phase 4 of 2019/2020, Indonesia has met all the requirements without any recommendation (OECD, 2020).

The processing and utilization of CbCR in Indonesia are further regulated by the Director General of Taxes Circular Letter No. SE-38/PJ/2019 issued on 31 December 2019. This is a very unfortunate situation since this regulation was issued after the exchange of CbCR information began in 2017. According to SE-38/PJ/2019, the receiving, processing, and exchanging data of CbCR are carried out by the Director of International Taxation and Director of the Data and Information of Taxation. Further, SE-38/PJ/2019 provides the utilization of the data from CbCR, including high-level transfer pricing risk assessment and assessment of other BEPS-related risks (conducted

³ There are 92 jurisdictions as the signatories of CbC MCAA as of 31 January 2022.

by Director of Data and Information of Taxation) as well as economic and statistical analysis (conducted by Director of Potential, Compliance and Revenue).

The regulation of CbCR through PMK-213/2016 has affected hundreds of taxpayers in Indonesia who are required to prepare and submit CbCRs with their tax returns. In 2021, Indonesia sent CbCR to 23 jurisdictions and received CbCR from 50 jurisdictions. Business entities have appreciated the Indonesian government's adoption of BEPS Action 13 CbCR. Because of the short timeframe between the release of the regulation and the deadline for the first report, taxpayers faced several challenges and difficulties when the rules were first enacted. This obligation also unavoidably increased the compliance cost for the MNEs, especially since it must be reported annually (Rosdina, Tambunan & Irianto, 2019).

Another challenge arises when the PMK-213 rules do not explicitly point out that the obligation is applicable only in cross-border situations. Consequently, the rules also apply to domestic transactions, even though the formulation of transfer pricing in the context of tax obligations is more relevant in the case of a transaction between a local taxpayer and a foreign taxpayer (Rosdina, Tambunan & Irianto, 2019; Quddus, 2017). Another challenge is the effect of this obligation on the state-owned corporations, which are likely to have less possibility of engaging in transfer pricing to avoid taxes. This obligation will raise a significant technical challenge for them, and increase their compliance cost. There is also no safe harbour to distinguish taxpayers from low-risk sectors, leading to higher material and non-material costs for taxpayers, particularly the compliant ones (Saputra, 2017).

Despite being adopted for five years, there is a limited research study on the effectiveness of CbCR in Indonesia. Kurniawan and Saputra studied the effect of CbCR obligation on the companies' tax avoidance behaviour in 2020. They suggest that the implementation of CbCR as a private disclosure has decreased the corporate tax avoidance of the MNEs operating in Indonesia (Kurniawan & Saputra, 2020).

4.2 Should CbCR Go Public?

With the adoption of EU Directive 2021/2101 within the European Union in December 2021, it seems that the application of public disclosure of CbCR in the world in the near future is unavoidable. Many parties, including the researchers and mainly Non-Governmental Organizations (NGOs), have supported this public disclosure since BEPS Action 13 was introduced. For developing countries like Indonesia, this possibility could offer some potential benefits from the greater transparency it provides, which could deter profit shifting.

This section identifies and analysis the potential benefits of implementing public disclosure of CbCR

from a developing country perspective, particularly Indonesia. In addition, this section also examines the challenges and risks that might arise from the public disclosure of CbCR.

4.2.1 Potential Benefits

In the view of public CbCR proponents, it would be more beneficial to make CbCR public. Some scholars argue that public CbCR is believed to be the most effective way to ensure corporate transparency (Oguttu, 2020). They say that CbCR is not only relevant to tax administrations. As CbCR serves several purposes, it should not be placed only in the hands of tax administrations (Financial Transparency, 2016). A major advantage of public disclosure is equal and timely access to CbCR for all relevant stakeholders (Müller, Schoenrock & Spengel, 2022). Public disclosure would aid countries, international organisations, NGOs, journalists, research institutions, and civil societies in understanding the existing system. It also helps stakeholders in assessing the efficiency and effectiveness of the current system as it stands (Falcão & Yaffar, 2020). Making the CbCR reports public would allow additional eyes from this variety of stakeholder groups to help utilise the data submitted by MNEs and identify any concern indications to the appropriate tax authorities. This advantage would be especially apparent in countries with ineffective tax administrations, such as developing countries.

There is a greater reliance on corporate income taxes in developing countries; therefore, they are more vulnerable to profit shifting. The information from CbCR could be a valuable tool for them to deter tax avoidance resulting from profit shifting. However, the restricted approach of CbCR information has impacted the ability of developing countries to access the reports. Many developing countries do not have access to the CbCR data. Of the 119 jurisdictions with activated exchange relationships in January 2020, only 57 have access to the reports. Among them, only three African states receive the CbCR, suggesting an imbalance between geographic regions. Their limited capacity to exchange information results from the requirement to have QCAA agreements with other countries (Eurodad, 2020).

Public CbCR would ensure that all tax authorities and governments have equal access to the CbCR information (Eurodad, 2020). Bringing public reporting to CbCR would be the most effective and fair way to ensure equal access for all tax administrations (Financial Transparency, 2016). When the CbCR is made public, it will assist all countries, even those not participating in the automatic exchange of information (Mbatha, 2021). Currently, Indonesia has QCAA with 81 jurisdictions. With the CbCR made public, Indonesia could also get access to other jurisdictions. Furthermore, Public CbCR would save tax authorities

time and money by enabling a simple query of the data instantaneously through the register, rather than recording and compiling several sets of files submitted by MNEs and other tax authorities.

Public CbCR would make tax policy data visible. It is essential not only for tax administration but also for parliamentarians, citizens, journalists, and civil society. An expanded government's immediate access to the CbCR would allow a country to assess the effectiveness and fairness of the corporate tax system and decide whether to modify its existing tax policies. Increased transparency from public CbCR would stimulate public discourse on what a suitable tax system should include and put pressure on governments to take more effective action (Mbatha, 2021). It could also help policymakers make evidence-based policy decisions in areas other than taxation, such as economics, finance, and investment. With public CbCR, governments should be able to make better policies, and civil society should be better informed.

For the MNE itself, public CbCR will serve as public accountability of their company if CbC reporting is made public, allowing the public to hold MNEs accountable for paying their fair share of taxes in the countries where they operate (Oguttu, 2020). Furthermore, with the obligation to report subsidies received by MNEs from the government, public CbCR will give citizens the information they need for a balanced debate on MNEs' contributions.

Public CbCR also allows transparency for the internal of the company's interests, particularly the worker and the shareholder. Public CbCR will provide valuable information about the company to better engage with them. Investors also benefitted from public CbCR. It will also help them in making an investment decision. Increased public transparency on where taxes are paid through public CbCR would help investors since it promotes overall transparency and enables them to conduct more extensive analyses. According to some commentators, public disclosure would significantly reduce investment risk by allowing investors to analyse tax strategies and issues. Public CbCR would let investors and employees make informed choices and assert their rights (Müller, Schoenrock & Spengel, 2022).

A fully public CbCR would also serve other purposes beyond identifying tax evasion risks. It could be an essential tool to improve governments' accountability. Transparency on all MNEs' tax payments would enable citizens to hold their governments responsible for those payments. In this way, public CbCR may highlight corruption by revealing specific company-government agreements (Financial Transparency, 2016). This is very important considering Indonesia's very low corruption perception index,

which is ranked 96th out of 180 countries (Transparency International, 2021).

In addition, CbCR disclosure will improve public scrutiny of MNEs. Public scrutiny is an effective deterrent against aggressive tax evasion. The Extractive Industries Transparency Initiative (EITI) has demonstrated the benefit of such information for extractive businesses, so there is no reason why other industries would be any different. Public scrutiny is also essential to ensure taxpayers comply with their obligation to submit CbCR. As indicated earlier, taxpayers' compliance with the submission of CbCR reporting is considered poor in Indonesia since the reporting duties are only known based on the assessment taxpayers do while sending notifications to the CbCR channel. Under public CbCR, the public will also monitor taxpayers' compliance with this obligation. For CbCR to be more successful in preventing profit shifting, it is anticipated that more MNEs would disclose their CbCR.

According to non-governmental groups, trade and labour organisations, and investors, the primary advantage of mandating public disclosure is to hold tax-aggressive corporations responsible and eventually reduce tax evasion practices, therefore levelling the playing field. There is also an argument that disclosing more tax information to the public, including the publication of CbCR, may put MNEs under reputational pressure, reducing their motivation for profit shifting (Chand & Picariello, 2021).

The public disclosure of CbCR will also improve tax authorities' monitoring of transfer pricing risks. The information provided by CbCR will encourage the application of fairness and the arm's length principle. Moreover, public CbCR could be a helpful aid in the current development of formula-based income allocation rules under the proposals for Pillar 1 in the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Falcão & Yaffar, 2020).

4.2.2 Challenges and Risks

Although some parties support the public disclosure of CbCR, some oppose it for various reasons, including confidentiality, reputational risks, and cost. This section explores the challenge and risks that may arise in public disclosure of CbCR.

As the pillar of the current CbCR regime is the confidentiality of the information, making it public would make confidentiality the most significant concern of all. Disclosing CbCR data through the adoption of public CbCR could make commercially sensitive information (which was previously confidential) available in the public domain. It could result in significant violations of taxpayer rights in a business (Chand & Picariello, 2021). Public disclosure

could also result in the loss of proprietary information for firms (Hasegawa et al, 2012).

The breach of confidentiality may have an adverse impact on competitiveness. With public CbCR, competitors could utilise the information provided and gain an unfair competitive advantage. Adopting public CbCR may also result in discriminatory treatment towards MNEs that are not required to submit CbCR, for instance, MNEs with a total consolidated turnover of less than IDR 11 trillion. Competitors who are not governed by the regulations will be able to benefit from this knowledge without being required to reveal comparable data themselves. For example, a competitor could quickly determine taxpayer profit margins from CbCR, which is a valuable source of competitive information (Chand & Picariello, 2021).

However, some proponents of public CbCR argue that MNEs will not become less competitive; instead, it will increase competition in the market. According to an academic study, current EU public CbCR obligations on the banking industry "provide greater transparency and meaningful data that is otherwise unavailable, and can help identify profit-shifting to tax havens by European banks." It further said that the move had already deterred the transfer of profits to low-tax nations. There is evidence that public CbCR has had no detrimental effect on the competitiveness of the banking industry. It has led to the increasing trend of MNEs voluntarily publishing their CbC profit and tax information, for instance, Vodafone, ENI, Shell, and Repsol (Haines, 2020). Subsequently, some researchers suggest that a minimalist approach of CbCR with limited information such as revenue earned and tax paid could also become a choice of public disclosure (Cockfield & MacArthur, 2015).

With public CbCR, there is a risk that information provided from the CbCR might be misinterpreted by third parties with limited knowledge of tax laws and the group's relevant business attributes (Netjes & Freyer, 2022), especially in the absence of complete information about the group's value chain, operations, and resulting arm's length related party pricing. Moreover, misinterpreting the information can also lead to increased reputational risks for the company. Companies argue that misunderstanding may lead to unjustified allegations since non-tax specialists may find it difficult to understand complex tax data. In general, business representatives think that a mandate for public disclosure goes much beyond the fundamental purpose of a high-level risk assessment instrument (Müller, Schoenrock & Spengel, 2022).

Another concern of adopting public CbCR might be related to cost. Some direct costs for disclosure are believed to be associated with CbCR. There is also implicit cost that may exceed the direct disclosure costs

depending on whether the disclosures are publicly available or available only to tax authorities. First, CbCR disclosure would involve direct costs associated with adjusting existing systems and procedures to CbCR requirements. Various factors, such as the group structure, impact these costs. However, there is no consensus among experts as to whether the collection of data for CbCR purposes, in general, is particularly burdensome. Some say that many current financial reporting systems are already technically capable of delivering country-specific data or that the required information can be obtained from financial and internal accounts and tax returns. Others suggest that the existing transfer pricing systems would need to be significantly extended since CbCR needs data that is not required for current transfer pricing analyses and hence does not now available. Each CbCR would incur direct reporting costs on a regular basis. Gathering and maintaining data consistency across jurisdictions and time would be expensive. Further, the cost of CbCR may increase if companies need to justify and elaborate on their reports to the public (Murphy, 2009).

While some argue that CbCR is beneficial, others believe that even separate CbCR templates do not prevent MNEs from profit shifting. This is due to the fact that their common tax minimization strategies are mainly based on the legal exploitation of gaps and loopholes in domestic and international tax law. As a result, the expected costs for CbCR would exceed anticipated benefits, leading to the conclusion that CbCR cannot be considered an effective measure to combat international profit shifting (Evers, Meier & Spengel, 2014). Therefore, whether the CbCR is disclosed in private or public is no different. Joshi et al. discovered that private country-level disclosures could deter overall tax avoidance but have little impact on income-shifting activities. The study suggests that public disclosure of CbCR is not required to prevent tax avoidance; thus, private disclosure of CbCR information may suffice (Joshi, 2020). Simone and Olbert also support their findings. Their evidence suggests that disclosure requirements mandated by a specific regulator can influence companies' decisions, even though these disclosures are not publicly available to other stakeholders (Simone & Olbert, 2021).

5. CONCLUSION

From the discussion of the previous sections, it can be concluded that Indonesia's CbCR implementations have broadly aligned with BEPS Action 13 recommendations. However, some additional measures were adopted to meet the specific needs of the Indonesian tax authority when applying this Action. The adjustments include:

- 1) The obligation to prepare CbCR is imposed on every Indonesian business group with total consolidated revenue of at least IDR 11 trillion regardless of any group member abroad. Therefore, a business group that only operates in Indonesia is still required to prepare CbCR if its consolidated revenue exceeds the CbCR threshold;
- 2) There is an additional obligation to prepare a CbCR worksheet for Indonesian UPEs to assist them in preparing their CbCR;
- 3) There is an adjustment to the UPE concept. PMK-213/2016 requires an Indonesian parent entity to submit a CbCR even though the Indonesian parent entity is owned by another entity in another country or jurisdiction; therefore, not the ultimate parent entity in the BEPS Action 13 concept; and
- 4) Indonesia does not adopt a surrogate secondary filing mechanism. Instead, the obligation to file TP documentation is shifted to an Indonesian subsidiary company if Indonesia fails to obtain TP documentation from the country where the ultimate parent company is located.

Through CbCR, developing countries can better understand MNEs' operational structures, improving their risk assessment of transfer pricing. However, the restricted approach of CbCR information impacts the ability of developing countries to access the reports. Many parties favour the implementation of public CbCR. For developing countries like Indonesia, public disclosure might improve their access to CbCR information. Thus, it may be utilised to discourage profit shifting more effectively, enhance tax policies to create a better tax system, and strengthen public scrutiny. As CbCR is essential to not only tax administrations, with the public disclosure, all relevant stakeholders have equal and timely access to CbCR. Public CbCR can help policymakers make evidence-based policy decisions helping them to formulate better policies, and civil society should be better informed. CbCR also creates internal transparency for shareholders and employees. Additionally, it can aid investors in making investing decisions. CbCR might potentially function as a form of corporate and governmental public accountability. On the other hand, implementing public CbCR may present confidentiality concerns, reputational risks, and cost issues for taxpayers.

From the explanation above, developing countries like Indonesia seem to have more interest in making CbCR publicly available compared to developed countries. As developed countries already have greater access to CbCR information, public disclosure would also allow developing countries to take advantage of it. The improved transparency of public CbCR will assist developing countries in improving their tax systems that encourage greater tax collection, which is already

better in developed countries. Additionally, developing countries' governments can make better policies and deal with corruption more effectively through public CbCR, a frequent problem in emerging economies. It can also reduce investment risk, which is expected to increase investment in developing countries.

However, the challenges of making public CbCR for developing countries may also be more significant than in developed countries. With the role of corporate tax being more significant in developing countries, it is possible that companies that feel favoured may reject implementing the policy. Given the risks, the costs incurred may also be relatively more enormous for developing countries.

In summary, given those potential benefits and challenges, implementing public CbCR seems beneficial for developing countries. However, it cannot be concluded whether the benefits outweigh the costs. The development of public disclosure movements, including open disclosure of CbCR in the EU, has accelerated the need for developing countries to prepare themselves for implementing public CbCR in the future. In particular, by preparing a mitigation corridor for the potential risks that may arise.

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