„Zeszyty Teoretyczne Rachunkowości”
tom 93 (149), 2017, s. 9–22

Stowarzyszenie Księgowych
w Polsce

# Increasing transparency in the European Union: developments of Country-by-Country Reporting

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**Abstract**

The aim of the paper is to bring closer Country-by-Country Reporting and outline possible future amendments of the introduced anti-tax avoidance measures. The article presents the motives of implementing the international CbC initiative, aimed at increasing transparency of the biggest multinational enterprises, with particular emphasis on the specificity of the European Union. Part 2 of the paper analyses the European legal bases for companies' financial reporting. It also gives an overview of the main findings of Directive 2016/881, which implements Country-by-Country Reporting and allows for the exchange of information between tax authorities. Part 3 deals with the national perspective, presenting the CbC solutions implemented to the Polish legal system; the paper also attempts to assess the potential impact of tax information disclosures, both from the perspective of taxpayers and the tax administration. The final part presents conclusions and tries to draft future developments of the Country-by-Country Reporting system. In the paper, the following research methods have been used: critical analysis and deduction, with particular reference to the source materials and legal acts, as well as the reports of the European Commission, consulting companies, and NGOs. Although the article deals with tax matters, CbC Reporting is an important and relevant issue from the point of view of researchers and accounting specialists. Reporting this phenomenon is part of the accounting science as a universal tool for recording economic phenomena. The author examined all relevant sources and took into account all important factors in order to obtain a comprehensive picture of CbC Reporting and to prepare a paper that may serve as a reference for future research.

**Keywords**: Country-by-Country Reporting, tax transparency, European tax law, international cooperation in tax matters.

**Streszczenie**

***Country-by-Country Reporting* jako inicjatywa w kierunku poprawy przejrzystości finansowej w Unii Europejskiej**

Celem artykułu jest przybliżenie inicjatywy *Country-by-Country Reporting*, wypracowanej w ramach międzynarodowych inicjatyw nakierowanych na walkę z unikaniem i uchylaniem się od opodatkowania, a także nakreślenie perspektyw ewolucji systemu raportowania według jurysdykcji podatkowych. W artykule zaprezentowano przesłanki leżące u podstaw wprowadzanych zmian, ze szczególnym uwzględnieniem specyfiki unijnej, wynikającej z potrzeby harmonizacji przepisów krajowych członków Wspólnoty. W części 2 przybliżono podstawy prawne dotyczące sprawozdawczości firm europejskich, obowiązujące przed wprowadzeniem przepisów raportowania według krajów, a następnie zaprezentowano główne

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ISSN 1641-4381 *print* / ISSN 2391-677X *online*

http://www.ztr.skwp.pl
DOI: 10.5604/01.3001.0010.3187

założenia dyrektywy dotyczącej automatycznej wymiany informacji. W części 3 zaprezentowano rozwiązania CbC wdrożone do polskiego porządku prawnego ustawą o wymianie informacji podatkowych z innymi państwami; podjęto również próbę oceny potencjalnych skutków ujawniania danych o największych podatnikach PIT, zarówno z perspektywy podatników, jak i administracji skarbowych. W podsumowaniu zawarto wnioski końcowe i zaprezentowano najnowszą inicjatywę unijną, zmierzającą do zobowiązania międzynarodowych przedsiębiorstw do upubliczniania informacji zawartych w raportach *Country-by-Country*. W artykule zastosowano metodę krytycznej analizy i dedukcji, ze szczególnym uwzględnieniem materiałów źródłowych i aktów prawnych, a także raportów Komisji Europejskiej, firm doradczych oraz organizacji NGOs. Chociaż artykuł dotyczy kwestii podatkowych, sprawozdawczość CbC stanowi ważne zagadnienie z punktu widzenia zarówno naukowców, jak i specjalistów ds. księgowości; fakt raportowania tego zjawiska wpisuje się w naukę rachunkowości jako uniwersalnego narzędzia ewidencji zjawisk gospodarczych. W artykule zbadano wszystkie istotne źródła, a także wzięto pod uwagę ważne czynniki, tak, by uzyskać kompleksowy obraz *Country-by-Country Reporting*, mogący służyć jako punkt odniesienia do przyszłych badań.

**Słowa kluczowe**: raportowanie według kraju, przejrzystość podatkowa, europejskie prawo podatkowe, międzynarodowa współpraca w zakresie podatków.

## Introduction

Recent years have brought a shift in the public perception of aggressive tax optimisation practices. Multinational companies, by using the discrepancies of various national tax systems, managed to minimise their overall tax burdens to levels not reached before. Extremely low effective tax rates and, as a result, the erosion of national tax bases, have led to conclusions that today's European corporate tax framework does not apply to all equally. As a consequence, it does not fit at all the idea of a tax system in which EU citizens have confidence or which they are ready to comply with because they consider it fair and equal. The annual losses in tax revenues due to corporate tax avoidance were estimated at the European Union level at EUR 50–70 billion (European Parliament Research Service, 2015, p. 5). Additionally, the 2015 European Commission study pointed out that 70% of profit shifting was carried out through transfer pricing between a company's branches located in multiple jurisdictions and the intellectual property shifted to low tax countries (European Commission, 2015, p. 23). As governments had to compensate for such losses, the flight of the most mobile factors had its consequences in shifting the tax burden elsewhere – to the labour and to smaller, less mobile businesses.

The Single European Market, in order to develop, requires transparent rules which would stimulate international business activities. At the same time, some additional conditions must be fulfilled in order to make sure that all entities are treated equally, with no discrimination. However, European analysis show that domestic companies pay 30% higher taxes than their multinational rivals, due to profit shifting (European Commission, 2016c). It adds the next argument to the discussion on the EU corporate tax environment – an environment that should not only create minimal obstacles for multinational business, but also provide legal certainty and a level-playing field in order to sustain healthy competitiveness in the Single European Market (European Commission, 2016d).

Unilateral efforts taken by Member States, implemented in order to protect their national tax bases and to fight aggressive tax planning, do not help. The cross-border nature of corporate tax avoidance means that actions conducted only at the national level lead to further problems, as they increase the legal uncertainty for investors and create new loopholes for tax avoiders to exploit.

Taking all the arguments into account, the EU Member States decided that the key to preventing tax avoidance lies in well-targeted corporate tax reforms and greater coordination between Member States. As a consequence, they have taken steps aimed at stopping profit shifting and preventing the erosion of national tax bases.

One of the steps was directed towards fairer and more transparent corporate taxation. The main transparency initiative was a proposal for Country-by-Country Reporting (CbCR) between tax administrations, through which they would exchange key tax-related information on multinational enterprises (MNE) operating in the EU. Such a solution would provide Member States with crucial information to better target their tax audits and identify tax avoidance schemes. Increased transparency could also help to deter multinationals from engaging in aggressive tax planning schemes (European Commission, 2016e).

It was also important for the European Union to have a coordinated and legally-binding approach to Country-by-Country Reporting, so that all Member States implement it in a uniform way. Most Member States have already committed to CbCR under the OECD Base Erosion Profit Shifting (BEPS) initiative[1], which created the risk that they may implement the provisions in different ways (or that some Member States – particularly those who are not OECD members – will not implement them at all). Enshrining these requirements in EU law would prevent loopholes in the EU's tax transparency network and administrative burdens for businesses (European Commission, 2016e).

## 1. The state of play before implementing Country-by-Country Reporting

The research led by the European Commission in order to assess the potential for further transparency on income tax information clearly presented the state of play before introducing the Country-by-Country Reporting requirements to European law (European Commission, 2016a). Under EU law, limited liability companies established in the EU are required to publish their financial statements. Their content is driven by Generally Accepted Accounting Principles (GAAP) and other rules adopted by the EU (Accounting Directive, IFRS, and Transparency Directive). This information is mainly designed to inform and protect shareholders, investors, and other stakeholders.

As per the relevant GAAP, the financial statements disclose information on CIT with varying degrees of detail. The IFRS require disclosures and reconciliation on the effective tax rate. European law additionally foresees that large companies disclose the

[1] Transparency in tax affairs is also one of the pillars of the OECD's Base Erosion and Profits Shifting project (BEPS). The project refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. The package, which provides 15 Actions to tackle BEPS, is in the implementation phase and will involve significant changes to domestic and international tax rules (see more: http://www.oecd.org/tax/beps/).

average number of employees, net assets, stated capital, accumulated earnings, and a complete list of companies consolidated in the financial statements. However, GAAP applied in the EU require no geographical breakdown of tax-related information per country.

The European Parliament for years recommended corporate transparency by introducing the CbC Requirements to all industry sectors. Also, many NGOs supported the idea of increased transparency among the biggest multinational enterprises. In their opinion, the demand for more detailed information on corporate tax generally hinges on the assumption that it would assist any stakeholder to assess whether MNEs have paid their fair share of taxes. The specific objective, e.g. increasing corporate transparency, which could be achieved by implementing the proposed changes, would also support reaching more general postulates raised in the discussion: (a) enterprises should pay tax where they actually make a profit, (b) corporate responsibility could be fostered in order to contribute to welfare through taxes, (c) the democratic debate on how to remedy market and regulatory shortcomings would help in reaching fairer tax competition in the European Union (European Commission, 2016a, p. 13).

According to the EC Impact Assessment Report, the fact that companies in the European Union publish their individual financial statements should make it possible for any stakeholder to reconstruct, for a given EU MNE group, the breakdown on a country-by-country basis, information such as the profit before tax, tax expense, headcount, and assets. Transparency on taxes paid, in the form of country-by-country reporting, is already in place for certain sectors and industries. From 2015 onwards, credit institutions and investment firms established in the EU must publish their CbCR reports. From 2017 onwards, large extractive and logging industries are also obliged to publish their payments to governments on a country-by-country basis[2].

Recent years have brought an intensification of initiatives aimed at fighting tax avoidance and evasion. One of the main initiatives was to increase the transparency of the biggest multinational enterprises, regardless of their industry. On 25 May 2016, ECOFIN decided on the amendments to the EU Directive on the Automatic Exchange of Information[3]. The Directive extended the CbC Requirements to big multinationals from all sectors and committed to sharing the obtained tax information between tax administrations. The European initiative was aligned with internationally agreed measures against Base Erosion and Profit Shifting, but adjusted to the requirements of the Single Market and EU law.

[2] Since 2015, credit institutions and investment firms established in the EU have had to publish a stringent sectoral country-by-country report pursuant to Article 89 of the Capital Requirements Directive. Any bank in the EU must disclose this report and publish it together with its financial statements. The report includes country-by-country information on the names, nature of activities, and geographical location, turnover, number of employees on a full-time-equivalent basis, profit or loss before tax, tax on profit or loss, and public subsidies received. Extractive/logging industries are already subject to an obligation to prepare a report on payments to governments on a country-by-country basis, pursuant to the Accounting Directive and Transparency Directive (see: European Commission (2016c).

[3] Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU of 15 February 2011 as regards the mandatory automatic exchange of information in the field of taxation.

The Directive introduces mandatory CbC Reporting to be prepared by all multinational enterprises with activities in the EU and a consolidated annual turnover of more than EUR 750 million. To ensure the proper functioning of the Internal Market and fair competition, the reporting obligations apply both to EU MNE groups and non-EU MNE groups with one or more entities located in the EU.

The Directive requires multinationals to report information on revenues, profits, taxes paid, capital, earnings, tangible assets, and the number of employees on a country-by-country basis. This information must be reported for fiscal years starting on or after 1 January 2016, to the tax authorities of the Member State where the group's Ultimate Parent Entity (UPE) is tax resident. If the Ultimate Parent Entity is not an EU tax resident, the report would have to be filed through a Surrogate Parent (EU or non-EU based) or the EU based subsidiaries. The Directive gives Member States the option to either require secondary filing for fiscal years starting on or after 1 January 2016 or to defer that obligation to financial years starting on or after 1 January 2017.

The Directive provides that Member States shall exchange the report with any other Member State in which, on the basis of the CbC Report, one or more constituent entities of the MNE group are either resident for tax purposes or are subject to tax with respect to business carried out through a permanent establishment. The exchange must take place within 15 months after the last day of the MNE group's fiscal year to which the CbC Report relates (EY, 2016).

As Commissioner Moscovici commented on the agreement on the Directive, the EU Member States have finally agreed to abandon the traditional culture of secrecy and self-interest in corporate taxation, and to embrace a new style of openness and collaboration instead. The added value for businesses was that an EU approach to reporting between tax authorities would replace the patchwork of different national approaches that are starting to emerge (European Commission, 2016d, p. 8).

## 2. Polish CbCR solutions

In the explanatory memorandum to the proposed Directive, the Commission noted that most Member States, in their capacity as OECD members, have committed to implementing BEPS measures, and that the Directive aims to achieve a certain degree of uniformity in implementing CbC reporting across the EU. The proposal has been specifically designed to enable the automatic exchange of CbC reports to build on the existing rules in Directive 2011/16/EU relating to the practical arrangements for exchanging information, also including the use of standard forms.

Indeed, in Poland, Country-by-Country Reporting (CbCR) was introduced in 2015, before the EU Directive amending the Directive on the Automatic Exchange of Information was agreed. The 2015 amendment of the Corporate Income Tax Act brought significant changes to transfer pricing regulations, with the aim of adjusting Polish law to the guidelines of the OECD's above-mentioned initiative. The BEPS Action 13 report on transfer pricing documentation levied additional requirements on taxpayers conducting related-party transactions; it also introduced the Country-by-Country Reporting requirement for the largest companies. As a result, from 1 January 2017, the biggest internationally active Polish capital groups (with consolidated revenues exceeding EUR 750m) were obliged to file CbC-R tax returns and provide information about their taxable income, tax paid, and their place of business. Only in cases when the consolidating entity was a subsidiary of a foreign party could the obligation be shifted abroad. According to the OECD guidelines, the information obtained was to be used by the tax authorities to assess the risk of violating the transfer pricing regulations, and to select entities that should be subject to tax audits (PwC, 2017).

By October 2016, there were no clear guidelines in Poland regarding what information taxpayers should include in the CbC form. In the last quarter of 2016, the work on this issue accelerated; as a consequence, in October 2016, a draft regulation regarding CbC Reporting was published on the website of the Government Center for Legislation. At the same time, intensive work on the complex Act that would regulate all issues connected with the exchange of tax information with others states began, and in November 2016 the previously mentioned draft regulation was accepted by the Lower House of Parliament (Sejm) as the executive law to the Draft Act on the exchange of information with other states (Kwiatkowski, Dymkowska, 2017).

The proposed Act on exchange of information with other states was supposed to be a complex instrument projected to ensure the effective application of tax laws in cross-border situations. The aim of the proposed law was to create a system which allows comprehensive and relevant information to be obtained on MNE Groups regarding their structure, transfer-pricing policy, and internal transactions within and outside the European Union.

Through the Act on the exchange of information with other states, a number of European directives dealing with issues of transparency, tax evasion and avoidance, were supposed to be implemented to the Polish legal order[4]. In the explanatory note, the Ministry of Finance stated that the Act will allow Poland „to participate in the global exchange of information in tax matters and, consequently, to achieve the main objective of combating challenges in the area of tax fraud and tax evasion, including aggressive tax planning". Indeed, the system in which the parent company sends the complex report to the tax authority in the Member State where it resides, and then the report is

[4] Implementation of: Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU on the mandatory automatic exchange of information on taxation; Council Directive 2015/2060 of 10 November 2015 repealing Directive 2003/48/EC on the taxation of savings income in the form of interest payments; Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU on the automatic exchange of information on taxation providing for the automatic exchange of information with regard to individual interpretations of cross-border tax rulings and advance pricing agreements; Council Directive 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards the mandatory automatic exchange of information in the field of taxation providing for the automatic exchange of tax information about entities belonging to a group of entities.

shared with all Member States where the group is liable for tax, can help all tax authorities in obtaining the complete picture[5].

### 2.1. CbC Requirements

The Act on the exchange of information with other states was signed on 9th March 2017 (Dz. U. 2017, item 648). The law extended the obligations of Polish taxpayers belonging to large capital groups to additional tax reporting obligations; it also levied the duty of submitting a notification to the Head of the National Tax Administration specifying which entity from the group will be responsible for preparing the CbC Report. As part of the automatic exchange of information process, the Head of the National Tax Administration shall, within 15 months of the end of the reporting year, forward the information received to the competent authorities of those Member States, or their competent authorities which are parties to a qualifying agreement between the competent authorities, where at least one entity within the group has its seat or place of management or operates through permanent establishment (Bajger, 2017).

As in Council Directive 2016/881, the law identifies the entities responsible for CbC Reporting. The Ultimate Parent Entity that has its registered office or management board in the territory of the Republic of Poland shall provide – by electronic means – information about the group of entities (Art. 83.1). The entity is obliged to submit the information in the form of a CbC Report to the competent tax authority within 12 months of the end of the tax year. The first CbC forms for the 2016 tax year should be submitted by Polish entities by 31 December 2017. In the first reporting year for which a group of entities is required to file a parent entity (i.e. financial year starting after 31 December 2015), this period was extended by 10 months.

It is worth mentioning that the Act on the exchange of information, in order to fully implement the Directive, widened the group of entities falling under the CbC reporting obligation, by defining the term „Surrogate Parent"[6]. As a consequence, some Polish

[5] The Act also regulates the automatic exchange of information in the field of taxation with non-EU countries based on Common Reporting Standard (CRS), as committed by the Republic of Poland in the agreement signed on 29 October 2013 (Multilateral Competent Authority Agreement). The Act also introduces or clarifies regulations on the exchange of information on personal income, the exchange of information on accounts reported by financial institutions, and – importantly from the point of view of transfer pricing – the exchange of information concerning the interpretation of individual tax rulings and advance pricing agreements.

[6] The term *„Surrogate Parent Entity"* means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as the sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity's jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions apply: (a) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence; (b) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the Member State is a party but does not have a Qualifying Competent Authority Agreement in effect to which Poland is a party, for filing the country-by-country report for the Reporting Fiscal Year; (c) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Member State to the Constituent Entity resident for tax purposes in the Member State (Art. 84.1). The term *„Reporting Entity"* means the Constituent Entity that is required to file a country-by-country report in the jurisdiction of tax residence (e.g. of the place of management board, registered office, or the place of permanent establishment activity); on behalf of the whole MNE Group.

companies, other than the parent company, will also be obliged to submit CbC forms in specific cases. Accordingly, any company belonging to a group with a consolidated turnover of more than EUR 750 million should ensure that a company forming a CbC is assigned to its group. Failing to do so can have serious consequences: when a CbC form is not filed in any tax jurisdiction, the Polish company may be required to submit it to the appropriate tax authorities. A penalty of up to PLN 1 million may be imposed for failing to submit a tax form (Kwiatkowski, Dymkowska, 2017).

Moreover, the Act introduces a change into the Act of 10 September 1999, the Fiscal Penal Code, 80d, which provides that a person who, contrary to the provisions of the Act, „is acting in the name or interest of the taxpayer (...) submits false information for the purposes of affiliated group information, shall be liable to a fine of up to 240 daily rates"[7] (Art. 95).

## 2.2. The information to be reported in CbCR

The CbC report should be filed with respect to its reporting fiscal year within 12 months of the last day of the reporting fiscal year of the MNE group and shall contain the following information: (a) aggregate information relating to the amount of revenue, (b) profit (loss) before income tax, (c) income tax paid, (d) income tax accrued, (e) stated capital, (f) accumulated earnings, (g) number of employees, and (h) tangible assets other than cash or cash equivalents. All information should be given with regard to each jurisdiction in which the MNE group operates (Art. 87.1). Such a structure is intended to enable the tax authorities to easily identify which tax jurisdictions generate the largest revenue in the group, and to indicate those jurisdictions in which the entities generate a relatively large proportion of revenue as a result of intra-group transactions.

The minister responsible for public finances should specify, in any future regulation, the detailed scope of data to be used to report an MNE's Group allocation of income, taxes, and business activities on a tax jurisdiction-by-tax jurisdiction basis (Art. 87.2). The regulation will take into account the *„General instructions for filling in the country-by-country report"*, annexed to Directive 2016/881 and provided together with three templates: (a) Overview of allocation of income, taxes, and business activities by tax jurisdictions; (b) List of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction, (c) Additional information, with any further brief explanation that is considered necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report (Ministerstwo Finansów, 2016b, p. 39).

The two Tables annexed to Directive 2016/881, as they reflect well the intentions and define the scope of the data that shall be used for CbC Reporting, are presented below. They allow for a clear presentation of an MNE Group's allocation of income, taxes, and main business activities on a Country-by-Country basis and can be of help for reporting entities:

[7] The daily rate cannot be less than 1/30 of the minimum monthly wage or exceed it more than 400 times (in 2017 between 66.67 and 26,666.67 PLN). As a result, the fine foreseen by Art. 80d of the Fiscal Penal Code can reach up to 6.4m PLN.

**Table 1**. Overview of allocation of income, taxes and business activities by tax jurisdiction

| Name of the MNE Group:<br>Fiscal Year concerned:<br>Currency used: | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Tax Jurisdiction | Revenues | | | Profit (loss) before income tax | Income tax paid (on cash basis) | Income tax accrued – current year | Stated capital | Accumulated earnings | Number of employees | Tangible assets other than cash and cash equivalents |
| | Unrelated party | Related party | Total | | | | | | | | |
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Source: Directive 2016/881, Section III.A. Template for the country-by-country report

**Table 2.** List of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction

| Name of the MNE Group:<br>Fiscal Year concerned: | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Tax Jurisdiction | Constituent Entities Resident in the Tax Jurisdiction | Tax Jurisdiction of Organisation or Incorporation if different from Tax Jurisdiction of Residence | Main Business Activity(ies) | | | | | | | | | | | | |
| | | | Research and Development | Holding or Managing Intellectual Property | Purchasing or Procurement | Manufacturing or Production | Sales, Marketing or Distribution | Administrative, Management or Support Services | Provision of Services to Unrelated Parties | Internal Group Finance | Regulated Financial Services | Insurance | Holding Shares or Other Equity instruments | Dormant | Other (1) |
| | 1. | | | | | | | | | | | | | | |
| | 2. | | | | | | | | | | | | | | |
| | 3. | | | | | | | | | | | | | | |
| | 1. | | | | | | | | | | | | | | |
| | 2. | | | | | | | | | | | | | | |
| | 3. | | | | | | | | | | | | | | |

Source: Directive 2016/881, Section III.A. Template for the country-by-country report

This ability to provide ae detailed geographical breakdown of information can be hampered, in some cases, by the limited availability of information (generally observed in third countries) and the resources necessary to engage in such exercise, even as regards information publicly available in the EU (European Commission, 2016a). Indeed, in the report assessing the introduced changes, the Polish Ministry of Finance also admitted that the new law will augment the regulatory burdens for companies that fall under the scope of the CbCR. Parent companies' new duties will result in costs, connected with the increased number of documents plus the introduction of the obligation to transmit data electronically.

The information received in the CbC Reporting process should enable tax authorities to react to harmful tax practices by making changes in legislation or by undertaking adequate risk assessments and tax audits, and to identify whether companies have engaged in practices that have the effect of artificially shifting substantial amounts of income into tax-advantaged environments. The Ministry of Finance proposed evaluation procedures, which would in future verify the effectiveness of the implemented changes. The evaluation, to be concluded after 2020, will take into account the number of audits that resulted in income assessment, in relation to the overall number of entities selected for tax audit on the basis of analysing the data from CbC reports (Ministerstwo Finansów, 2016a & 2016c).

## Conclusions

Country-by-Country Reporting is a just one of the initiatives of the Package aimed at fighting tax avoidance and evasion that was taken by the EU Member States. However, it reflects very well the changed approach to corporate taxation: the overall aim is not to protect national tax bases any more, but to reach a wider perspective of the whole European market. As Pierre Moscovici said at the Tax Congress of the Berlin Tax Forum 2016: „I must stress that it is not just our Member States that benefit from the new EU approach to corporate taxation. Businesses will benefit too. I want to shatter the myth that fighting corporate tax avoidance and creating a competitive business environment are mutually exclusive goals. In fact, they are two sides of the same coin" (European Commission, 2016d).

What is worth mentioning is that the European Union is working on future developments that go beyond the measures projected in the OECD initiative. The internationally agreed solutions to the 15 actions in BEPS envisage Country-by-Country Reporting between tax administrations on key financial data from multinationals. The information is for tax authorities only, with no option to make the CbC Reports available to the public. In addition, EU Directive 2016/881 provides the legal grounds for Member States to implement CbCR between tax authorities.

The European Commission, however, is working on a proposal regarding public CbC Reporting. The proposal foresees the obligation for multinationals to publicly disclose certain information on a tax jurisdiction-by-tax jurisdiction basis. It mentions a detailed list of elements that are relevant for citizens to get a thorough understanding of a company's activities and taxes paid. The annual corporate income tax accrued is perceived as key information. It corresponds to the corporate income tax expense shown in the profit and loss statement, excluding deferred taxes. The amount of tax paid will ascertain that the company has actually paid those taxes. Companies would also be obliged to explain in a meaningful way the difference between taxes accrued and taxes actually paid. Moreover, companies would be obliged to disclose the amount of accumulated earnings (for example, non-distributed profits). Undistributed profits are not a problem per se. However, high levels of accumulated earnings in tax jurisdictions that do not abide by tax good governance standards can be seen as an indicator of potential attempts to avoid taxes (European Commission, 2016c).

At present, the proposal for public Country-by-Country Reporting by large companies is being negotiated by the Council and the European Parliament, as is a proposal to strengthen the Anti-Money Laundering Directive (European Commission, 2016b). Estimations show that approx. 6,000 multinationals active in the EU would need to publicly disclose their tax-related information. Medium-sized or large subsidiaries of non-EU headquartered groups would be subject to the reporting obligation on behalf of their ultimate parent. If a non-EU headquartered company does not have subsidiaries, but only branches, these branches would face similar obligations. The reports on income tax information would be made available to the public on the company's website. Firms would also be required to file those reports in the relevant national business registers, also accessible to the public. This would enable a comparison of the tax paid by similar companies in similar situations or the tax contributions made to national governments by different companies. It can also help to identify potential weaknesses or loopholes in national tax systems (European Commission, 2016c).

The idea of public Country-by-Country Reporting has also been taken into account in Poland. In April 2017, the Ministry of Finance started work on amendments to the Corporate Income Tax Act, which will enable them to publish information from tax returns prepared by the biggest companies. If the law is modified, all „individual taxation data", e.g. information about the profit, costs, calculated tax base, and the tax due, as well as the identification data of the taxpayer with the corresponding tax year will be published. The finance minister will also be able to set the amount of the effective tax rate to a taxpayer, calculated as a percentage of the amount of tax payable in gross profit disclosed in the financial statements for the same fiscal year. The project aims, on the one hand, to raise awareness of the business in terms of its social responsibility, and on the other, to build public understanding and control the behaviour of CIT taxpayers. According to the Ministry of Finance's estimations, 1% of the biggest companies will fall under the scope of the projected law, i.e. approx. 4,000 entities (Pokojska, Szulc, 2017).

There are some fears that publishing data on tax paid (and other important financial information) will violate companies' commercial secrets and expose them to losses.

The Ministry of Finance believes, however, that informing the public about the amounts of tax paid by the biggest companies will increase „social control" and facilitate the work of NGOs.

The European Commission has the same opinion: this public CbCR initiative is not expected to have negative social or environmental impacts. The introduced changes should not affect businesses, SMEs or micro-enterprises, as the measure targets only MNEs that are the best equipped to engage in tax planning activities. Moreover, the Commission pointed out that the initiative will deliver additional incentives for MNEs to pay tax where they actually make profit. Furthermore, public scrutiny will enable a better informed democratic debate on the causes and consequences of aggressive tax planning which could prevent mismatches, loopholes, and harmful tax measures (European Commission, 2016a).

The initiatives towards transparency and accountability can create a level playing field for all businesses in the European Union. They can also help in creating a system in which taxpayers have confidence, and which they are ready to comply with. Future consistent (and coherent) actions towards the harmonisation of EU rules should allow for the synergy effect in the Single European Market to be achieved, and simultaneously, for stable revenues for EU countries to be delivered.

**References**

European Commission (2015), *Corporate Income Taxation in the European Union*, Accompanying the document Communication from the Commission to the European Parliament and the Council on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action, Commission Staff Working Document, Brussels, 17.6.2015, SWD(2015) 121 final.

European Commission (2016a), *Commission Staff Working Document: Impact Assessment assessing the potential for further transparency on income tax information, Accompanying the document Proposal for a Directive 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*, Strasbourg, 12.4.2016, SWD(2016) 117 final.

European Commission (2016b), *Fair Taxation: Commission welcomes new rules to prevent tax avoidance through non-EU countries*, European Commission Press Release, Brussels, 21.02.2017, IP/17/305.

European Commission (2016c), *Introducing public country-by-country reporting for multinational enterprises – Questions & Answers*, European Commission Press Release, Strasbourg, 12.04.2016, MEMO/16/1351.

European Commission (2016d), *Speech by Commissioner Pierre Moscovici at the Tax Congress of the Berlin Tax Forum 2016*, European Commission Press Release, Berlin, 20.06.2016, SPEECH/16/2263.

European Commission (2016e), *The Anti-Tax Avoidance Package – Questions and Answers – Fact Sheet*, European Commission Press Release, Brussels, 21.06.2016, MEMO/16/2265.

European Parliament Research Service (2015), *Bringing transparency, coordination and convergence to corporate tax policies in the European Union; Part I: Assessment of the magnitude of aggressive corporate tax planning*, EPRS, September 2015.

Kwiatkowski J., Dymkowska M. (2017), *Kto złoży formularz CbC i co będzie musiał w nim ujawnić*, „Rzeczpospolita", 03.04.2017.

Ministerstwo Finansów (2016a), *Ocena skutków regulacji: Projekt rozporządzenia Ministra Rozwoju i Finansów w sprawie szczegółowego zakresu danych przekazywanych w informacji o grupie podmiotów*, Ministerstwo Finansów, 28.11.2016.

Ministerstwo Finansów (2016b), *Raport z Konsultacji – instytucje pozarządowe projektu ustawy o wymianie informacji podatkowych z innymi państwami. Omówienie wyników przeprowadzanych konsultacji publicznych*, Warszawa 2016.

Ministerstwo Finansów (2016c), *Wyjaśnienia do formularza oceny skutków regulacji, Projekt ustawy o wymianie informacji podatkowych z innymi państwami*, Ministerstwo Finansów, 19.05.2016.

Pokojska A., Szulc M. (2017), *Ujawnianie danych o podatnikach CIT. Czy Polska ma być w czołówce zmian?*, „Dziennik Gazeta Prawna – Prawo", 03.04.2017.

## Internet sources

Bajger J. (2017), *Nowe obowiązki i wymiana informacji w zakresie cen transferowych*, KPMG, 27.03.2017; https://home.kpmg.com/pl/pl/home/insights/2017/03/gi-alert-nowe-obowiazki-i-wymiana-informacji-w-zakresie-cen-transferowych.html (access: 21.04.2017).

EY (2016), *European Commission releases anti-tax avoidance package designed to provide uniform implementation of BEPS measures and minimum standards across Member States*, EY Global Tax Alert, 28.01.2016; http://www.ey.com/gl/en/services/tax/international-tax/alert--european-commission-releases-anti-tax-avoidance-package-designed-to-provide-uniform-implementation-of-beps-measures-and-minimum-standards-across-member-states (access: 21.04.2017).

OECD, *Base erosion and profit shifting*; http://www.oecd.org/tax/beps/ (access: 21.04.2017).

PwC (2017), *Tax Insights from Transfer Pricing*, PwC Poland, 09.12.2015; (https://www.pwc.com/gx/en/tax/newsletters/pricing-knowledge-network/assets/pwc-poland-new-tp-regulations.pdf (access: 18.04.2017).

## Legal Acts

Council Directive 2014/107 / EU of 9 December 2014 amending Directive 2011/16 / EU on the mandatory automatic exchange of information on taxation.

Council Directive 2015/2060 of 10 November 2015 repealing Directive 2003/48 / EC on the taxation of savings income in the form of interest payments.

Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16 / EU on the automatic exchange of information on taxation providing for the automatic exchange of information with regard to individual interpretations of cross-border tax rulings and advance pricing agreements.

Council Directive 2016/881 of 25 May 2016 amending Directive 2011/16 / EU as regards mandatory automatic exchange of information in the field of taxation.

Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission

Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.
Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.
Ustawa z dnia 9 marca 2017 r. o wymianie informacji podatkowych z innymi państwami (Dz.U. 2017, item 648).
Ustawa z dnia 10 września 1999 r. *Kodeks karny skarbowy* (Dz. U. 1999 Nr 83 item 930, as amended).