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Christian Aid submission on COM(2016)198 - Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU

1. Introduction

Christian Aid welcomes the opportunity to make a submission on **COM(2016)198 - Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU**. The proposal is the Commission's latest attempts to introduce greater transparency in the reporting of multinational corporations (MNC) something which Christian Aid has called for, and in particular the introduction of public country by country reporting (CBCR), since 2008.

We believe that enhanced publicly accessible reporting from MNC, in the form of country by country reporting, (CBCR) serves a vital function in improving the transparency and accountability of the taxation of MNCs. It is clear that public trust has been lost in this area and needs to be rebuilt. As taxation is recognised to be an area of significant flexibility and judgement, and having a significant impact on developing countries, we believe that an equitable solution will involve a high level of public transparency in addition to non-public transparency towards revenue authorities. By providing the information publicly to help policy makers, parliamentarians, journalists, investors, NGOs and citizens understand the role that MNCs are playing in and the contributions they are making to our societies, CBC reporting can be a part of rebuilding that trust by showing where companies are playing a positive role in the development of countries, and by helping us all understand how a globalised economy is working, and enabling better rules to govern these activities to emerge.

The European Union has an important role in addressing these issues, and we particularly welcome the Commission and the Parliament's engagement on the issue. However, it is our view the Commission proposals of April 12th this year, fall far short of what is required to tackle aggressive tax planning and tax avoidance in Europe. It is also difficult to see how the proposals will do anything to allow developing countries prevent MNCs shifting vast profits out of their countries, avoiding tax that could and should be spent on the provision of essential services and fulfilling citizens' fundamental rights. Developing countries suffer most as a consequence of corporate tax dodging with the IMF, putting the figure lost to developing countries as high as $200 bn annually**1**

It is also important to note that under the Lisbon treaty EU member states are obliged to ensure policy coherence in support of international development objectives. In other words, the policies of one government department should not inadvertently undermine the development of other countries. This is echoed in the government policy document 'One World One Future' , in which there is a commitment to ensuring that government policies in one area do not undermine the objectives of Irish Aid. EU efforts to introduce greater transparency into corporate reporting, and to tackle corporate tax dodging should be guided by this objective.

2. Substantive Issues

*The Commission proposals would require large multinational companies to disclose publicly the income tax they pay within the European Union, on a country by country basis. In addition, they would be asked to disclose how much tax they pay on the business they conduct outside the European Union. For those tax jurisdictions that do not abide by tax good governance standards (so-called tax havens), this information will need to be disclosed on a disaggregated basis. Any multinational company — European or not — that is currently active in the EU's single market with a permanent presence in the Union and that has a turnover in excess of EUR 750 million would have to comply with these additional transparency requirements.*2

These proposals are problematic for a number of reasons.

[1] https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf
[2] https://www.djei.ie/en/Consultations/Consultations-files/European-Commission-FAQs-Tax-Transparency.pdf

- Firstly, these proposals cannot be called country by country reporting for the simple reason that they do not cover every country in which a company might operate. Companies with subsidiaries outside of the European Union, and not on the yet-to-be-defined non cooperative tax jurisdictions, will only be required to report on these subsidiaries on an aggregate basis. Rolling together the jurisdictions where profit is likely to be shifted to, with those where profit stripping may be most egregious, and in particular developing countries of the global south, is of course to negate the entire point of CBCR – which is to understand the disaggregated distributional picture. Those who wish to use CBC reports to help devise policy and understand MNC behaviour will be thwarted, or potentially come to wrong interpretations due to the aggregated nature of CBC reports. An essential benefit of CBCR should be to improve our understanding of how investment decisions are made and how policy affects investment, particularly in developing countries, but aggregated data will impede that understanding- potentially making it worse.

  In addition, these proposals may actually incentivise companies inclined to engage in aggressive profit shifting to simply shift their presence to one of the jurisdictions where aggregate reporting is the only requirement, inadvertently promoting a 'race to the bottom' between countries competing for this business.

  The proposals are particularly problematic for developing countries which will be unable to see the entire spectrum of company activities essential to help them identify possible instances of illegal profit shifting by companies. This is despite the OECD's own acknowledgement3 that developing country measures to challenge BEPS is often hindered by lack of information. The CBC reports required under the OECD's BEPS initiative are only to be exchanged on the basis of existing tax treaties between states, and as many developing countries do not have extensive treaty networks, they will be unable to access the information. Full public country by country reporting therefore is the only way in which developing countries can be guaranteed access to this vital information.

- Secondly, there is no shared definition of what constitutes a non-cooperative jurisdiction, or tax haven. Previous attempts by the European Union to draw up such a list have failed as a result of major power imbalances and the intrinsically political nature

[3] http://www.oecd.org/tax/part-1-of-report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf

of such a process. It is highly unlikely that any future list will include, for example, the United States or Switzerland, despite both jurisdictions being acknowledged as being attractive to some companies on the basis of the high levels of corporate opacity that they offer4. Proposals that have at their core a black list of jurisdictions that holds little international credibility will leave the process fundamentally flawed.

In addition, as the black list is unlikely to be static, countries being added to, or removed from the list will generate additional compliance costs for businesses and a confusing picture for those looking to use the reports, particularly for research purposes. For example, if one year the report features Bermuda as a separate reporting jurisdiction, the following year may see it being aggregated with others. That will dramatically reduce the utility of the reports, given that those countries that have just graduated from the list are ones that probably merit most attention as to the impact of either being on or off the EU list.

- Thirdly, the threshold of $750 million under which companies are not obliged to provide country by country reports is too high to be useful. Setting a threshold of $750 million will rule out between almost 90% of all multinationals, according to OECD figures5. The rationale behind setting the threshold this high seems to be to ensure that smaller companies are not subjected to onerous additional reporting requirements and echoes the OECD argument that 10% of companies are responsible for 90% of all MNC revenues. However this is not necessarily true at local level, and in particular in developing countries, where companies that fall below that threshold may still be significant local actors and taxpayers. While we are sympathetic to the European Parliament's suggested threshold, which is based on the Commission's own definition of 'large undertakings' as detailed in the Accounting Directive6, we also acknowledge that trying to introduce new requirements on all large companies in one go, may be difficult as there is a limited number of SAP programmers to amend and adapt the relevant systems. An alternative proposal would be to initially introduce the threshold at $750

[4] http://www.financialsecrecyindex.com/

[5] http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf

[6] The Parliament has (eg. in the Shareholders' Rights Directive) supported a threshold based on the definition of "large undertakings", which, according to the Accounting Directive (art. 3 section 4), means multinationals that exceed at least two of the three following criteria: a) balance sheet of 20 mn euros, b) turnover of 40 mn euro, c) 250 employees.

million and over the following five years reduce that amount until all large companies were compliant.

- One of the main concerns expressed by MNCs, is that reporting on a country by country basis would incur additional compliance costs. It is inevitable that there will be some modest costs incurred by transnational enterprises to prepare data for CBCR, but this should not be overstated.

  Her Majesty's Revenues & Customs (HMRC) in the United Kingdom did an assessment of the implementation costs for businesses of CBCR and found that "one-off costs are estimated as negligible, with annual costs to businesses affected by the measure of £0.2million".[7] These are not significant costs for most transnational enterprises and rate as insignificant when compared to the likely benefits of increased transparency.

  In addition, given that many countries, including Ireland, have committed to requiring MNCs to provide a CBC report to tax authorities, it is clear that there would be minimal extra costs involved in making such reports public.

  The low costs reflect the reality that any competent tax director of a transnational enterprise should already have the information required for public CBCR readily available. It is almost inconceivable that tax directors, and therefore the companies that employ them, do not know their sales (both source and destination), employee headcounts and costs, profits, tax provision and tax paid, assets employed and intra-group transactions by state. Recording and compiling such data is essential to company tax directors fulfilling their duties to their companies and, crucially, to ensuring that all necessary books and records are available to companies to ensure tax liabilities are capable of being fairly recorded at any point in time, which should be the requirement of all statutory demands for internal control systems (e.g. under the US Sarbanes-Oxley Act). Any additional cost would relate to the preparation of data for presentation purposes, which is unlikely to impose a significant cost burden on any transnational enterprise.

  Finally, some trade associations have made it clear they expect a barrage of so-called 'double taxation' cases if and when companies are required to give country-level data on

[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385161/TIIN_2150.pdf

their activities. It might be good to bear in mind that the discussion about fair corporate taxation has largely started after overwhelming evidence was leaked about MNCs' very low tax payments, in some cases even lower than 1%, so the question should be more about how double non-taxation (where MNCs avoid paying by using legal loopholes and asymmetries) can be avoided. To reach this objective, more publicly available information is key.

Also, until now MNCs that do fall under existing CBCR disclosure rules have not reported any such double taxation claims. Indeed, representatives of HSBC and Barclays banks have furthermore voiced support for public CBCR in their testimonies for the European Parliament TAXE committee, indicating that they do not fear unjustified tax claims.[8]

For further information, please contact Sorley McCaughey at smccaughey@christian-aid.org

[8] http://www.europarl.europa.eu/news/en/news-room/20151110IPR01911/Special-Committee-on-Tax-Rulings-and-Other-Measures-Similar-in-Nature-or-Effect