

ASSESSMENT ON THE POTENTIAL BENEFIT OF IMPLEMENTATION OF COUNTRY BY COUNTRY REPORT TO TACKLE BEPS IN INDONESIA

Ani Tri Wahyuni

KPP Pratama Muara Bungo, Jl Teuku Umar No.3, Pasir Putih, Muara Bungo, Indonesia.

Email : ani.wahyuni@pajak.go.id

Angga Wahyu Anggoro

Direktorat Informasi Perpajakan, Gd B Lt 5 Jl Jenderal Gatot Subroto Kav 40-42 Jakarta, Indonesia.

Email : angga.anggoro@pajak.go.id

ABSTRAK

Base Erosion and Profit Shifting (BEPS) spillover effect jeopardizes developing countries due to inexperience and lack of legislative resources. To deal with the BEPS, a robust implementation of BEPS Action Plan should be guarded. The common theme among study in this field is whether Country by Country Report (CbCR) is an effective tool to tackle BEPS. This paper highlight the potential benefit could be taken by developing countries in adopting CbCR handbook of effective tax risk assessment. Whether the high cost of CbCR implementation could be paid by employing CbCR effective tax risk assessment. The results suggest that the CbCR tax risk assessment could be used to increase income tax revenue in the developing country such as Indonesia by combining it with domestic regulations as implementation on other BEPS action plan recommendations. However, there are some problems of CbCR implementation, validity problem, confidentiality requirement and minimalist information, high cost of compliance and high cost of infrastructure and human resource training, need to be clear up to maximise the effectivity.

KEYWORDS: BEPS, CbCR, implementation, tax risk assessment, effectivity

Efek pengalihan keuntungan dan pengikisan basis pajak (BEPS) sangat membahayakan negara berkembang dikarenakan kurangnya pengalaman dan kurangnya sumber daya manusia. Untuk menanggulangi BEPS, negara harus mengawal implementasi rekomendasi dalam BEPS Action Plan. Penelitian terkini lebih menitikberatkan pada pertanyaan apakah Laporan per Negara (CbCR) dapat efektif diterapkan dalam memerangi BEPS. Sedangkan tulisan ini menitikberatkan pada pertanyaan apakah penerapan CbCR untuk penilaian risiko pajak berpotensi meningkatkan penerimaan pajak, apakah biaya yang dikeluarkan untuk implementasi CbCR sepadan dengan hasil yang akan didapatkan. Kesimpulan yang diperoleh adalah bahwa penilaian risiko pajak dengan CbCR berpotensi meningkatkan penerimaan pajak dengan mengkombinasikannya dengan ketentuan perpajakan yang merupakan implementasi rekomendasi dari BEPS Action Plan lainnya. Namun demikian, masih terdapat permasalahan dari CbCR seperti masalah validitas informasi, kerahasiaan dan minimnya informasi yang diminta dalam CbCR, biaya pemenuhan kewajiban perpajakan yang tinggi serta tingginya biaya untuk penyediaan infrastruktur dan penyediaan auditor yang handal perlu diselesaikan guna memaksimalkan efektivitas CbCR.

KATA KUNCI: BEPS, CbCR, Laporan per Negara, penilaian risiko pajak, efektifitas

1. INTRODUCTION

As nations' and countries' barrier disappear due to globalisation, businesses grow exponentially. Nonetheless, the growing of the business also means that tax cost is much higher as a result of increasing profit. To lower their tax cost, Multinational Enterprises (MNEs) usually create some effort whether legal (tax avoidance) or illegal

(tax evasion). Some MNEs opt for business restructuring since it could provide 2 benefits. The first is for commercial and business reasons such as to exploit synergies, to streamline the business and to boost their supply chain efficiency. The other is for tax reason as study by Chakravarty and Kothari (2017) which argues that any such a restructuring has a tax consequence.

Lots of MNEs restructure their businesses by separating their members based on their functions and put them in specific tax haven or low tax countries. The aim is to reduce profit from high tax countries and shift it to low tax countries. The practice of eroding country's tax base and shifting profit from high tax jurisdiction to low tax jurisdiction known as Base Erosion and Profit Shifting (BEPS). They put their high-value functions and risk such as business enterprise, R&D, and IP holding, to the low tax rate or tax haven countries, and put the lower value function and risk, such as distribution and manufacture to the high tax rate jurisdiction. Furthermore, MNEs often reduce the function and risk which already have low value, such as converting marketing distributor to limited risk distributor and fully-fledged manufacturer to toll manufacturer. It might be the best way to outwit Arm Length Principle (ALP), an ongoing approved Transfer Pricing method proposed by OECD.

The BEPS done by the MNC's has decreased income tax which countries should obtain. Revenue lost from BEPS charges the world approximately \$240 billion a year (Bloomberg, 2014). The major sufferers of the BEPS practice are developing countries because the absence of appropriate legislative and administrative resources to counter it (Fuest and Ridel, 2010). Crivelli et al. (2015) examined international tax spillover as the parameter using data from 120 countries from 1980 to 2013. The study concluded that the effect of profit shifting is stronger in developing countries and more significant. It also found that developing countries have a larger ratio of revenue losses relative to GDP (Niels et al. 2016). It contended that the effect of income shifting negatively affected the development level of developing countries. The less powerful and less sophisticated tax systems of developing countries compared to developed countries, make it relatively easy being used by MNCs to shift their profits.

More recent attention has focused on the provision of whether CbCR is an effective weapon to combat Base erosion and profit shifting (BEPS). One of the OECD's proposals, which is said to be the most effective way and powerful tool to address the above problem is Country by Country Report (CbCR) (Murphy, 2012; Ting, 2014; Cockfield and MacArthur, 2015; and Wójcik, 2012). It is a way to disclose MNEs transparency. The CbCR is tax authority weapon to reveal tax information asymmetry in the tax avoidance (Ting, 2014). Countries need to implement BEPS Project recommendation in order to know whether base erosion and profit shifting could be effectively tackled. Despite the high investment cost, how potential CbCR could be employed using its Handbook of Effective Tax Risk Assessment? In this paper, it will be further discussed about the adoption of CbCR, whether countries could get high value by implementing Country by Country Report (CbCR) effective tax risk assessment using a case study of CbCR implementation in Indonesia.

The body of this paper is structured into 3 (three) section. The first section provides a general overview of literature review about the history of CbCR, legislation, exchange, *the appropriate use and tax risk assessment* and the CbCR implementation on developing countries (case of Indonesia). The second section addresses research method. The next is in-depth analysis of effective tax risk

assessment implemented in Indonesia and its problems. Meanwhile, the final section sets conclusions.

2. LITERATURE REVIEW

2.1. History of CbCR

The first concept of CbCR aimed for accounting purposes. It was first introduced by Richard Murphy, co-founder of Tax Justice Network (TJN) by releasing an International Accounting Standard proposal in which MNE should report its geographically based turnover and tax. The standard would state information about members of the MNE, locations, activities, sales which is divided based on independent and affiliated transactions, purchase values among affiliated parties, generated value added of each member, profit in each location, and taxes paid in each location. All of the information was individual per entity and should be publicly disclosed (Murphy, 2003).

The proposal had broader aims for transparency compared to the aim of recent CbCR proposed by OECD, which only for taxation. Its goals were for an assessment of company's CSR, investment risk, tax risk, contribution to the society and country (by tax being paid) (Murphy, 2003).

Murphy has successfully raised the issue of Country by Country into a campaign agenda by cooperating with some organisation such as Oxfam, Christian aid, Action aid, and Eurodad (Longhorn, 2015). In 2003, PWYP published voluntary reporting on extractive industries (EITI, 2003). The report is including part of government production entitlement, national state-owned enterprise entitlement, taxes, royalties, dividends, bonuses, miscellaneous fees, other significant payment to the government, and revenue stream payment (Longhorn et al, 2016).

2.2. Countries Adoption of CbCR

In 2013, Murphy successfully assisted UK government to prepare United Kingdom Corporate and Individual Tax and Financial Transparency Bill. Also in 2013, EU commission released its directive for transparency in the area of Extractive industries. It is then amended in 2016 to introduce mandatory public disclosure for all industries operating in the EU with the threshold of global revenue of 750 million Euro a year.

Another biggest adoption of CbC report is Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). s 1504 and s 13(q) of Dodd-Frank Act require extractive industries to disclose their payment which includes taxes, royalties/licence fee, production entitlement, bonuses and other benefits of the commercial development of oil, natural gas and minerals.

2.3. OECD's CbCR

On 30 January 2014, OECD released its two-tiered Transfer Pricing Documentation Discussion Draft in which consist of master file (including CbCR template) and local file. (OECD, 2014c). On 16 September 2014, report on Action 13 has been released containing the revised standards and model CbCR template by reducing the amount of information to be disclosed and giving flexible options the information to be provided.

Information which should be included in the CbCR is allocation of income, taxes and business activities and constituent entities on a country basis (OECD, 2014a).

2.4. Requirement of Implementation Minimum Standard

100 countries and jurisdiction joined in the inclusive framework committed to implement BEPS project minimum standard and be ready to peer review of ensuring the consistent implementation. The inclusive framework is getting bigger by continuously adding signing countries. Per 1 January 2018, its member reached 111 countries (OECD, 2017).

The aim of monitoring and peer review is making sure of a level playing field. OECD is developing monitoring mechanisms which concern on jurisdictions' compliance with their commitments. On the review process, the mechanism may differ on each BEPS Action recommendations by considering countries' specific circumstances. On the implementation of CbCR, OECD will make sure the effectiveness of the filing and dissemination of the CbCR (OECD, 2017).

2.5. CbCR Implementation Package

In 2015, OECD released its CbCR implementation package. This handbook provides model legislation which can be adopted by countries which will implement a regulation regarding CbCR. Just like another legislation model, CbCR Implementation Package introduce some new definition such as MNE Group, Ultimate Parent Entity, Surrogate Parent entity, Constituent Entity, Systemic Failure and so on. OECD also provide legislation model related to CbCR filing obligation, notification, CbCR information, time for filing, use and confidentiality, penalties, and effective date.

OECD is still releasing guidance to effectively implement CbCR. It continually releases revised implementation guidance due to cases found in countries during the CbCR implementation. Some of the guidance released are CbCR Effective Implementation Handbook, CbCR Effective Tax Risk Assessment Handbook, Appropriate Use of CbCR information etc.

2.6. The Effective Tax Risk Assessment

OECD has released a guidance on how to employ the CbCR information for tax risk assessment, the main use of CbCR information. In the guidance, OECD put a well-defined risk assessment framework that enable countries to disseminate the information contained in the CbCR to the countries' tax risk assessment process. OECD also provide some samples of the risk assessment process in some countries. It also recognises 19 risk indicators that countries might find during the examining of CbCR.

2.7. Indonesian CbCR Implementation (Developing Country)

In implementing BEPS Action Plan 13 recommendation, Indonesia stipulated Minister of Finance Regulation (MoF Regulation) number 213 the year of 2016. It regulates three tiered transfer pricing documentation which is including Master File (MF), Local File (LF) and CbCR. The MoF regulation stipulates detailed MF and LF but not for CbCR.

Taxpayers are obliged to prepare masterfile and localfile if they conduct related party transaction and reach certain thresholds, annual gross turnover preceding fiscal year more than 50 billion rupiah or annual related party transaction for tangible goods more than 20 billion rupiah or other transaction more than 5 billion rupiah each.

The CbCR is further stipulated in Director General Regulation (DG Regulation) number 29 year of 2017. The DG Regulation adopts and complies with CbCR recommendations proposed by OECD. Almost all of the definition given in the CbCR implementation package have been introduced even though some of them are not expressly mentioned in the definition article. For instance, the definition of Ultimate

Parent Entity and Surrogate Parent Entity are stated in the filing obligation article instead of in the definition article.

In brief, the DG Regulation stipulates definition, filing obligation, information that should be included in the CbCR, effective date, notification and filing. Meanwhile, the appropriate use and penalties are stipulated in the MoF Regulation.

The obligation to file CbCR goes primarily to Ultimate Parent Entity (UPE). UPE shall mean a member of the MNEs' group which has a sufficient interest on the other members, so that it is required to prepare consolidated financial statement. The UPE shall be the on the top position of MNE's group structure; no other member nor other entity (outside the group) have interest on the UPE. The other requirement of a UPE is no entity consolidates the UPE's the financial statement. However, not all of the UPE is required to prepare, retain and file CbCR. Only an MNE with consolidated group revenue greater than 11 Trillion Rupiah (750 Million Euro) should file the CbCR. Of course, such requirement would make a UPE does not have a fix obligation to file CbCR but an on-off obligation which depends on its consolidated group revenue each year.

Indonesia also requires local filing to MNEs' subsidiaries including Permanent Establishment (PE) other than to UPE. Local filing means CbCR filing by subsidiaries' of MNE group. Not all countries require local filing on their CbCR regulations. There are three conditions which require MNEs' subsidiaries and PEs to file CbCR. The first is when the UPE's country or jurisdiction does not require the filing of CbCR. Next is when the UPE's country or jurisdiction has an international agreement such as DTA, TIEA, and MACC, but QCAA, an agreement which promotes AEOI. Lastly is when occur a systemic failure, a condition when a country or jurisdiction has suspended the automatic exchange or persistently failed to exchange CbCR.

One provision that might get special attention is about worksheet requirement. Indonesia is the one and only country apply it on the CbCR regulation. The worksheet is a detailed list of CbCR per entity. Basically, it combines two standardised CbCR forms, a financial information and a list of members of the MNEs and their activities, into one form. By applying this regulation, the tax authority will know a detailed information per entity. Meanwhile, OECD only requires CbCR information per country. However, Indonesia only applies this requirement for MNEs which their Ultimate Parent Entities (UPE) domicile in Indonesia. The detailed CbCR information which required to be filed is the same as OECD standard. The worksheet will not be exchanged to partner countries or jurisdictions.

Other than regulation stated above, DG Regulation stipulates that every member of the MNE, especially taxpayer which conducts an affiliated transaction, shall submit a notification, a statement whether or not it is obliged to file CbCR. Notification is a software wizard in which presents a sequence of dialog which lead to a certain conclusion, the obligation to file CbCR. If the wizard concludes that the taxpayer obliged to file CbCR, it directly requires the taxpayer to file CbCR through the same page on DGT online system. In the notification, the taxpayer shall also inform its consolidated group turnover and its UPE or Surrogate Parent Entity if it does not the UPE. The receipt gotten from the online filing will be a substitute of the CbCR attachment in the income tax return.

On the first OECD review of the domestic legal and administrative framework, Indonesia has passed it successfully. The review required mandatory implementation of some requirement on the CbCR implementation package on countries domestic regulations. Even though Indonesia made a special requirement, a worksheet, to its

UPE as mentioned earlier; it did not affect the result of the review because Indonesia only apply it to its taxpayer.

Lastly, Indonesia has done the first CbCR exchange. Before the exchange, Indonesia has obtained some requirements for CbCR exchange. In December 2017, Indonesia has passed data safeguard and confidentiality assessment done by OECD as a pass card for CbCR exchange. On 30 April 2018, the CbCR has been compiled from Indonesia's taxpayers. Having passed several CbCR exchange test scenarios mandated by OECD as a requirement before the exchange, Indonesia is one of the countries which has been ready and successfully done the first CbCR exchange on the middle of June 2017.

However, gotten lots of CbCR data from the taxpayer submission and automatic exchange of information, Indonesia has not ready preparing the further detailed regulation on the appropriate use of CbCR. The general regulation about the using of CbCR as tax risk assessment tool with certain restrictions has been enacted on the Ministry of Finance' regulation. This paper highlight the potential uses of CbCR based on the guidance of the effective tax risk assessment if it combined with implementation of other BEPS action plan recommendation in Indonesia.

2.8. Implementation of other BEPS Action Plan

Responding to other BEPS Project recommendations, Indonesia has enacted several regulations. Those among others are related to BEPS Action 4-Interest deduction, BEPS Action 2- CFC (Controlled Foreign Company) rules, and BEPS Action 13-transfer pricing documentation (TP doc). Several BEPS Project recommendations are on their way to be implemented including multilateral instrument (MLI) and mandatory disclosure rule (MDR).

Regarding recommendation of BEPS Action 2 about CFC, Indonesia has stipulated PMK-107/PMK.03/2017 in which Indonesia requires Indonesian Taxpayers to pay taxes on their deemed dividend if they have direct and/or indirect ownership on non-listed foreign company. In the regulation, it is stated that the revenue which will be deemed for dividend come from active and passive income.

Other than BEPS Action 2 as explained above, Indonesia has also implemented BEPS action 4 - interest deduction. Indonesia preferred to implement Debt to Equity Ratio (DER) to interest deduction rule. DER rate to be applied is 4:1.

3. RESEARCH METHOD

This study aims to assess potential benefit of CbCR implementation. It employs qualitative research method-case study of CbCR implementation in Indonesia, an emerging country which always updates its regulation with international taxation standards.

The use of qualitative case studies is a well-established approach in assessing implementation of a standard or policy. Some previous studies of effectiveness of CbCR adopted qualitative method in their research method such as Longhorn (2016), Wojcik (2016) and Murphy (2012). Longhorn (2016) employed qualitative content analysis method. Meanwhile Wojcik (2016) utilised simplified transparency action cycle modeled after Fung et al. (2007) to assess CbCR policy.

4. ANALYSIS

4.1. Disclosure Vs Confidentiality

As mentioned in the literature review, some of the previous versions of CbCR mandated full disclosure of the CbCR. It means that preliminary versions of the CbCR

required CbCR to be publicly available. Meanwhile, CbCR Implementation Package mandates that the information should only in the hand of tax authority, accessed by limited people, should be controlled and should be kept confidential. Changing the fundamental principle of the early model of CbCR, disclosure to confidentiality, OECD argues that the disclosure principle would jeopardize confidential business, industrial, and trade secrets to competitors. Supported this argument, The Association of Chamber of Commerce and Industry contended that competitors would allow drawing conclusion of potential market exploitation and trade secret. (Cristhensen, 2017).

Implementing the OECD's recommendation, Indonesian CbCR regulation adopted disclosure, confidentiality and appropriate use of CbCR. Indonesia's adoption of confidentiality also based on its Law Number 6 the Year 1983 concerning General Provisions and Tax Procedures as lastly amended by Law Number 16 the Year 2009 which states that "Every official shall be prohibited to give an unauthorized party any information known or provided to that official by a Taxpayer in the course of his position or duties to implement taxation rules."

As regards of the disclosure of CbCR, the analysis of the paper will follow Yonah (2016) by answering certain conditions in determining whether the disclosure of CbCR jeopardise companies' privacy.

- a. Whether the revealing information in the CbCR will lead competitors to discover future business plans? Does the disclosure of the CbCR really damage firm competitiveness?

From the type of information reported in the CbCR, it requires past information. CbCR doesn't require the MNE to report future information such as business plan. Mostly, the information is being taken from MNE's consolidated financial statement but the number of employees.

Just the same as the ordinary consolidated financial statement that everything has made public except tax information which countries mandate differently. Some countries such as Indonesia and USA dictate confidentiality information of tax being paid on the tax return (Law number 16 the year of 2009; 26 U.S.C. §7213). The tax information only can be disclosed to the court. Meanwhile, for certain country like Norway, it provides tax information to public (Collinson, 2016).

By disclosing the information in the CbCR, competitors do not likely directly know taxpayer business plan for instance: market strategy, competitive analysis, design and development plan, operation and management plan, forecast, and financing by looking at CbCR information. Some information which could be concluded directly by reading the CbCR are tax planning, marketing and supplier strategy. It could be obtained by looking at where the Taxpayer put its members, activities conducted, and the tax paid. However, the information which could be obtained is only lower level of company's business plan. The deeper level one and the future strategy need the further and deeper analysis by an expert which cannot be seen directly from CbCR information. Competitors can easily hire a financial consultant to know the company's business plan or conduct an in-house analysis. This conclusion shares the same result as Cockfield and McArthur (2015) who argues that none of the financial information required by CbCR would reveal trade, business or another secret as defined by OECD. As a conclusion, the disclosure will not harm firm competitiveness.

- b. Whether the disclosure will increase pressure on companies to line up their reported profits with the location where they pay taxes.

The CbCR requirement will encourage MNEs to restructure their business. There are two possible actions taken by MNEs, whether to add income to country or jurisdiction which has economic substance and high number of employees or to add employees and create additional functions, assets and risks. This restructuring aims to make as if a member of MNE has such of an economic substance. This conclusion is supported by Daholi (2016) which contends that MNEs will make subsidiary in the tax haven as if a normal company.

On the other hand, confidentiality requirement of reporting only to the tax authority, not to the public, may result at lower public pressure to the MNEs to pay the appropriate tax to the substance country or jurisdiction. As a result, MNEs behaviour toward tax avoidance will not lower due to the lack of public scrutiny (Smith, 1995; and Dyreng. et al, 2014). Another case which supports this conclusion is voluntary tax payment by Starbucks UK to HMRC to win back customers after public outcry that it has paid no tax (Nevile and Treanor, 2012).

c. Whether for certain information that has made public will change significantly the information.

As explained earlier, CbCR information is mostly based on the information on consolidated Financial Statement but not per country specific. CbCR disclosure has been applied to the certain industry such as extractive industry (EITI, 2003) finance (Dodd-Frank act, 2010 and EU directive, 2013). Some of these regulations have been introduced many years ago. The information are publicly available without any problem of the disclosure.

From the above analysis, it can be concluded that CbCR should be disclosed to lower the attempt of tax avoidance without being afraid of revealing of a business secret. Therefore, the rigid and very confidential data protection as stipulated in the CbCR appropriate use proposed by OECD, should be reviewed.

The last thing to consider about publicly disclosure of CbCR is that in practice, the CbCR is submitted directly by taxpayer without any validation to the tax return and directly exchanged. The process of audit comes in the stage of the using CbCR information. It means that the tax authority will know the validity of the CbCR information provided by the taxpayer after the CbCR exchange. No one can guarantee the validity of the exchanged CbCR information. This would not happen if OECD decided to apply disclosure principle on the CbCR information.

4.2. Information provided

The transparency and accountability are the fundamental principles tried to be addressed by TJN. However, there were slightly changing the data and information required for the first CbCR model and the OECD's model. The difference between maximalist approach (first version) and minimalist approach (OECD) are in the scope of reporting and the financial information provided in the report. In the maximalist model (Murphy, 2009), information is reported per entity in all countries where the MNEs operate. Other than that, the financial information proposed to be reported are not merely that reported in the minimalist OECD's CbC report (Cockfield and McArthur, 2015; Longhorn 2015). Meanwhile, OECD only requires some limited MNE information in a country based report. The information required in the maximalist approach that was not included in the minimalist approach are among others, hedging transactions, labour costs, and detailed cost and book value of physical fixed assets.

Maximalist approach was designed to disclose questions inter alia: countries where MNE operates, subsidiaries in each country or jurisdiction, the scale of MNE's operations, investment in each location, countries where profit is recorded, countries

where the tax is paid, intra-group trading, staff engagement, labour cost, countries where MNE exploit natural resources, transfer mispricing risk within group, level of activity compare to profit, risk of tax enquiry at potential cost to future earnings, tax risk of using tax havens countries, geopolitical risk and impact of low tax payments, operational risk, and sustainability (Murphy, 2012).

The maximalist approach is followed by following regulations which are imposed on extractive industry firms. For example, EITI standards report, The US Dodd-Frank Act Section 1504, the Accountancy and Transparency Directives of the European Council (plus logging sector), all of which require reporting information of revenue received and tax paid in each country and jurisdiction. Other than extractive industries, the maximalist form has also been applied in finance industries such as banks, credit institutions, and investment firms by the Capital Requirements Directives (2013/36/EU).

As one of the Inclusive Framework signatories, Indonesia should implement OECD BEPS Action Plan recommendation especially the minimum standard (OECD, 2017). As mentioned earlier, Indonesia has complied with the CbCR Implementation Package except for a specific area. CbCR implementation in Indonesia adds a specific requirement which only applied to domestic Ultimate Parent Entity (UPE) to prepare worksheet, a semi maximalist approach, which mandates a larger scope of a minimalist CbCR information which is provided per entity per country. Detail of the information required in the CbCR is still the same. Indonesia combines two parts of OECD CbCR templates become a single template which provides reported data and information such as countries where MNE operates, group members in each countries, group members' activities, revenues, and so on per entity.

There are several reasons why Indonesia required worksheet should be submitted in complement with CbCR. On the Taxpayer's side, it is to help Domestic Ultimate Parent Entity (UPE) in preparing their CbCR. The detailed information is needed by taxpayer in preparing the CbCR. Firstly, MNE should collect all required information of its members such as revenue, taxes, equity, and assets etc then combine all of the information into the CbCR. This process is just the same as what DGT CbCR worksheet is obliged, but Indonesia needs it to be submitted along with the CbCR. On the DGT's side, it will help DGT to make sure that Taxpayer has filed its CbCR correctly and accurately so there will no error reported by partner country or jurisdiction in the exchange of CbCR.

Indonesia's CbCR worksheet requirement solve a challenge of CbCR. The CbCR worksheet requires a detail information per entity even though only for CbCR submission of UPE in Indonesia. Adopting worksheet requirement may solve a challenge stated on the CbCR handbook of effective tax risk assessment, "employing jurisdiction level information can conceal information on specific entities".

Other than the limitation on the information provided per country not per entity, it is found that by employing the OECD CbCR model, the tax authorities cannot use it to know the big picture of MNE group as a whole. It is impossible to make a group structure (group family tree) due to lack information of group layering and the percentage of ownership. As Spicer (1988) argued that observing transfer pricing requires wider consideration of relationship among a firm's diversification strategy, intra-firm transactions, organization structure, management accounting and control systems. It means that the knowledge of the company structure is badly required in analysing transfer pricing case.

4.3. The CbCR Exchange

Due to the confidentiality and the appropriate use of CbCR, OECD has put high standard of exchange which make the exchange system very complicated. Countries should provide the same standard with OECD's unless they will not get the benefit from the exchange. The complication arise from the schema that should be submitted by the Taxpayers. Instead of in excel or PDF format, the CbCR should be submitted in an Extensible Markup Language (XML) Schema. It is a new format applied to taxpayer document submission therefore it is quite difficult for the taxpayers to understand and directly comply with the regulation. Even the tax authority itself found it difficult in preparing the template and the guidance. Moreover, there are some XML schema should be adopted differently; those are regarding the report and the correction.

The second problem comes from the exchange. Based on the CTS Conformance Testing Walk-Through there are two steps countries should go through, testing and exchange. However, before going through the steps, countries have to prepare their CbCR which have been collected from their taxpayers before going to be exchanged. The process is known as a packaging. In this process, tax authority should combine the CbCRs submitted by their taxpayers into a single XML schema per partner country or jurisdiction. Some country choosed to prepare a single CbCR XML schema per taxpayer, a model which is not recommended by OECD. It makes it difficult for the receiving country due to providing lots of status messages, another complicated XML schema which has to be sent to the partner countries or jurisdictions as a response that the CbCR has been successfully received or failed to be accepted. The next is testing; it is a preparation stage where countries should exchange some scenarios based on CbC: Country-by-Country Reporting XML Schema: User Guide for Tax Administrators and Taxpayers. Countries should successfully exchange the testing scenarios to be able to continue to the production process. In this process some countries failed and needed sometimes to successfully send their dummy CbCR. Beside exchange the dummy CbCR, since the testing process, countries has to provide status message for each CbCR package sent by their partner countries/jurisdictions. Due to its complexity, in the testing process, some countries failed to provide the status message as response to Indonesia's dummy CbCR testing scenario. Next is the exchange. The exchange is a process of transferring the CbCR collected from the taxpayers known as 'production'. Even though some countries have successfully done the testing, it does not guarantee that they will successfully gone through the exchange process. Some problems might arise due to the CbCR XML quality submitted by the taxpayers. The CbCR XML schema should comply with CTS standard. So, even though the CbCR has been validated using XML Schema Definition (XSD), a CBCR XML schema does not directly accepted by CTS.

4.4. Cost Vs effectivity

As some painful efforts have been conducted by countries and CbCR 2016 data has been obtained from taxpayers and the CbCR exchange, CbCR information need to be employed as soon as possible. However, Indonesia has not finished in preparing the regulation of the tax risk assessment. Once the regulation has been enacted, Indonesia will be ready to exploit the information contained in the CbCR.

The main purpose of CbCR is for tax risk assessment. CbCR helps countries to firstly determine a group tax risk by applying 19 potential tax risk indicators. The indicators determine size of group activities, level of related party revenue in particular jurisdiction, deviation result from potential comparables, comparison to market trends, level of profit compared to substantial activity conducted, level of

profit compared to tax accrued, level of activities compared to level of profit, placement of mobile activities in low level of taxes, changing of location of assets, locating marketing activities out of its key market jurisdiction, locating procurement entities outside manufacturing locations, existence of dual resident entities or no resident entities etc, as explained in the CbCR Handbook on Effective Tax Risk Assessment. The process can be employed by system which automatically calculate the ratios. Indonesia is in the process of developing this kind of system in its taxation directorate. This process will eliminate some group which have lower tax risk and Directorate of Taxes (DGT) will be able to put the resources only to specific high tax risk MNE groups. Then countries can put second assessment by combining and comparing the information outside of CbCR such as information generated from:

1. Tax return, to see the validity of assets, loan, and related party transaction provided in the tax return.
2. Masterfile and localfile, to understand the transactions conducted among the group members and the transfer pricing strategy and arrangement engaged in the mne group.
3. CFC Report, to see the disclosure and validity of reported foreign subsidiaries.
4. DER Report to see validity of details interest payment and entities involved.
5. And next to MDR requirement which will be implemented to the next regulation which are compulsory reporting from outsider including tax consultant about the BEPS schema.

From the explanation above, adopting CbCR provide great benefit for countries such as Indonesia which is in the process of modernising its tax system. The aim is to sharpen the tax audit and make some adjustments to protect tax base erosion from profit shifting which will be beneficial for DGT in fulfilling its tax income target.

However, as explained earlier, there are still some limitation on the OECD CbCR model which can outweigh the potential benefit which could be obtained in implementing CbCR such as:

1. The validity problem due to confidentiality of the CbCR information and appropriate use criteria. Moreover, there is no requirement of validation to tax return before the exchange. It casts doubt the result of the analysis.
2. Lack of information for each entity, structure and level of ownership. It is needed by tax authority to have deeper understanding of dimension of entire transfer pricing process and organisational context. This could reduce the tax risk assessment process using the CbCR information.
3. Higher cost of taxpayer compliance on the CbCR filing overshadows the potential benefit of CbCR. Even though there are some penalties applied to the taxpayer which not file CbCR, some of them choose not to file it due to the high cost of compliance such as paying somebody to provide CbCR and IT guy to convert their report to XML schema.
4. Tax authorities could not directly employ CbCR information due to extra complicated of the CbCR exchange and limitation on the ability of the auditor to make use of CbCR information. Providing a good IT system to collect CbCR information and exchange the CbCR requires high cost. It could be useless if the tax authority cannot effectively use the CbCR information to tackle the BEPS.

5. CONCLUSION AND RECOMMENDATION

The purpose of the current study was to determine whether implementing the BEPS Action 13 (CbCR) recommendation provides lots of potential benefit on retaining tax income base from BEPS practice.

This study has shown that CbCR proposed by OECD has moved from the previous track by mandates confidentiality instead of disclosure and chooses minimalist version other than maximalist version. The study suggests that the disclosure does not breach corporate privacy. Instead, it will make sure the validity of the CbCR information which can add the effectiveness employment of CbCR tax risk assessment.

Another result asserts that Indonesia has tried to complete the CbCR information by adopting worksheet requirement which contain information per entities, even though only applied for UPE in Indonesia. This option has been taken to solve a challenge of OECD CbCR, the information concealment.

Even though combining information provided in the CbCR and other information gathered from other regulations as implementation of BEPS action plan recommendations will raise the level of effectiveness of tax risk assessment and hone the audit process, the CbCR problems such as validity of the CbCR information, the lack of information for each entity, structure and level of ownership, high tax compliance, and high cost of providing infrastructure and human resources should be solved to increase its effectivity.

In the next CbCR evaluation on 2020, OECD should consider the concept of disclosure and maximalist information of CbCR so that the main purpose of the CbCR to tackle BEPS practice will be effectively conducted with lower cost.

FURTHER STUDY

This study needs to be completed by employing quantitative analysis of the amount of BEPS that could be addressed by implementing CbCR.

REFERENCES

- Republic of Indonesia, 1983, Law Number 6 regarding General Provisions and Tax Procedures (Supplement Number 3262 to the State Gazette of the Republic of Indonesia Number 49 of 1983) as lastly amended by Law Number 16 of 2009 regarding Enactment of Government Regulation in Lieu of Law Number 5 of 2008 regarding the Fourth Amendment of Law Number 6 of 1983 regarding General Provisions and Tax Procedures (Supplement Number 4999 to the State Gazette of the Republic of Indonesia Number 62 of 2009), Jakarta: Country Secretariat of Republic of Indonesia.
- Avi-Yonah, R. S., 2016, Country by Country Reporting and Corporate Privacy: Some Unanswered Questions, *Columbia Journal of Tax Law- Tax Matters*, 8(1), pp. 1-3.
- McLure, C. E. Jr., 2001, *Globalization, Tax Rules and National Sovereignty*, International Bureau of Fiscal Documentation.

- Chakravarty, A. and Kothari, B., 2017, OECD TP-Guidelines on business restructuring - Enigma of 'Exit Charge' & Indian landscape, <http://tp.taxsutra.com/experts/column?sid=390>.
- Christensen, J., 2017, Public country-by-country reporting: it's not about costs or trade secrets, <https://www.taxjustice.net/2017/06/06/public-country-country-reporting-not-costs-trade-secrets-2/>.
- Cockfield, A. J. & MacArthur, C. D., 2015, Country-by-Country Reporting and Commercial Confidentiality, *Canadian Tax Journal*, 63(3), pp. 627-660.
- Collinson, P., 2016, Norway, the country where you can see everyone's tax returns, <https://www.theguardian.com/money/blog/2016/apr/11/when-it-comes-to-tax-transparency-norway-leads-the-field>.
- Crivelli, E., et al., 2015, Base Erosion, Profit shifting, and Developing Countries, International Monetary Fund Fiscal Affairs Department: IMF Working Paper.
- Daholi, Q. H., 2016, Analysis of Country-by-Country Reporting in Base Erosion and Profit Shifting (BEPS) Action 13 and Indonesia's Transfer Pricing Documentation Rule, Dissertation submitted to University of Birmingham, Birmingham: The University of Birmingham.
- Crisp, J., 2014, Publishing banks' taxes and turnover will help the economy, says PwC, <http://www.euractiv.com/sections/euro-finance/publishing-banks-taxes-and-turnover-will-help-economy-says-pwc-308902>.
- Extractive Industries Transparency Initiative (EITI), 2013, The EITI standard, http://eiti.org/files/English%20STANDARD_11July_0.pdf.
- Fuest, C and Riedel, N., 2010, Tax Evasion and Tax Avoidance in Developing Countries: The Role of International profit shifting, Oxford: Oxford University Centre of Business taxation.
- Barkin, J.S. and Cronin, B., 1994, The state and the nation: changing norms and the rules of sovereignty in international relations. *International Organization*, 48, pp 107-130 doi:10.1017/S0020818300000837.
- Longhorn, M., 2015. Country-by-country Reporting Critical Analysis, Dissertation submitted to Queensland University of Technology, Brisbane: Queensland University of Technology.
- Longhorn, M., et al., 2016. Country-by-country reporting: An assessment of its objective and scope. *eJournal of Tax Research*, 14(1), pp. 4-33.
- Andrews, M., 2013, Do international organizations really shape government solutions in developing countries?, CID Working Paper No. 264.

- Murphy, R., 2003, A Proposed International Accounting Standard Reporting Turnover and Tax by Location, Basildon: Association for Accountancy & Business Affairs, <http://visar.csustan.edu/aaba/ProposedAccstd.pdf>.
- Murphy, R., 2012, Country-by-Country Reporting: Accounting for globalisation locally, Edition 1.2.
- Nevile, S. and Treanor, J., 2012, Starbucks to pay £20m in tax over next two years after customer revolt, <https://www.theguardian.com/business/2012/dec/06/starbucks-to-pay-10m-corporation-tax>.
- Niels, J., Tarslav, T. & Wier, L., 2016, Are less developed countries more exposed to multinational tax avoidance? Method and evidence from micro-data, Wider Working Paper, (ISBN 978-92-9256-053-9).
- Organisation for Economic Cooperation and Development (OECD), 2014a, Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, doi:10.1787/9789264219236-en.
- Organisation for Economic Cooperation and Development (OECD), 2014c, Public Consultation Discussion Draft on Transfer Pricing Documentation and CbC Reporting, <http://www.oecd.org/ctp/transfer-pricing/discussion-draft-transfer-pricing-documentation.pdf>.
- Organisation for Economic Cooperation and Development (OECD), 2017, Inclusive Framework on BEPS progress report, July 2016-June 2017.
- Smith, D. G, 1995, Corporate Governance and Managerial Incompetence: Lessons from Kmart, North Carolina Law Review, 74: 1037.
- Ting, A., 2014, iTax Apple's International Tax Structure and the Double Non-Taxation Issue. British Tax Review, Volume No.1, <https://ssrn.com/abstract=2411297>.
- Wojcik, D., 2015, Accounting for globalization: evaluating the potential effectiveness of country-by-country reporting, Environment and Planning C: Government and Policy, Volume 33, p. 1173-1189.