

March 27, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

RE: Public Consultation: Review of Country-by-Country Reporting (BEPS Action 13)

Dear Secretary Mnuchin,

On March 6, in response to an OECD Public Consultation document: Review of Country-by-Country Reporting (BEPS Action 13), 33 members of Congress, including 13 Senators and 20 Representatives, sent a comment letter to the OECD requesting that country-by-country (CbC) reporting information be made publicly available. (A copy of the letter is available [here](#)). The undersigned trade associations ask that the United States maintain its longstanding position at the OECD that CbC reporting information as with all other information provided to tax authorities remain confidential and not be made public.

CbC reporting arose as a result of Action 13 of the OECD/G20's Base Erosion and Profit Shifting (BEPS) initiative begun in 2013. The initial BEPS Action Plan approved by the OECD/G20 project in 2013, specifically contemplated only making CbC information available to "all relevant governments." This global consensus that the information is for governments was similarly reflected in the final report issued in 2015. The project has led to widespread sharing of CbC reporting information among governments, and indeed because the first reports were not exchanged among governments until 2018, governments are just beginning to be able to evaluate the benefit of these reports. The OECD is currently undergoing a reassessment of various aspects of the agreed CbC reporting framework. The agreement to provide information solely to tax authorities which are obligated to keep it confidential continues a longstanding international tradition with respect to the confidentiality of tax return information. The agreement of the United States on the inclusion of CbC reporting in Action 13 was specifically contingent on the requirement that the information remain confidential.

The objective of CbC reporting is to enable country tax authorities to make a high-level tax risk assessment with respect to multinational enterprises (MNEs) filing CbC reports, while balancing confidentiality of taxpayer information and the significant incremental burden placed on multinational corporations in the provision of such information. CbC reports provide taxing authorities with data on the global allocation of income, profit, taxes paid, and economic activity among the tax jurisdictions in which the multinational corporation operates. MNEs are required to identify each entity within the group doing business in a particular tax jurisdiction, and to provide an indication of the business activities that each entity conducts. The reports were designed specifically for high-level risk assessment and with a focus on minimizing compliance costs so that companies have flexibility in choosing the company data that is best

suited to this purpose. CbC reporting is not designed to provide a global information return for each individual entity in every country in a multinational group.

The IRS exchanges CbC reports with countries with which the U.S. has bilateral tax treaties or Tax Information Exchange Agreements (TIEAs) and with respect to which the IRS has negotiated intergovernmental agreements that set forth the conditions for the exchanges. The exchange of information provisions under U.S. double tax treaties and TIEAs provide that the information exchanged must be kept confidential and not be made public. Releasing CbC reports publicly would jeopardize proprietary information of U.S. companies which should be protected and should not be given to global competitors. Public disclosure would also adversely impact U.S. companies' willingness to provide additional information on a voluntary basis to assist tax authorities with their review. Because of the tax treaties and Sec. 6103(k)(4), the US cannot, without a change to the tax treaties and U.S. statutes, agree to the public disclosure by tax authorities of the tax return information contained in CbC reports.

If tax authorities were to release taxpayer CbC reporting information to the public as the Congressional letter recommends, there would be a serious risk that determining the relevant MNEs' tax liability would be based upon media reports rather than the tax law. Companies understand they must share tax information on a confidential basis with the relevant tax authorities, where it can be explained in context. However, companies must not be subjected to audit by media spin. Additionally, public release of information contained in CbC reports would lead to calls for the publication of the income tax returns themselves, a slippery slope.

The undersigned trade associations request that the Treasury Department maintain its longstanding position at the OECD that tax return information contained in CbC reports remain confidential and continue to oppose any efforts at the OECD, and by the U.S. Congress, to make these reports public.

Respectfully submitted:

American Chemistry Council
American Petroleum Institute
CompTIA
Financial Executives International
Information Technology Industry Council
National Association of Manufacturers
National Foreign Trade Council
Semiconductor Industry Association
Silicon Valley Tax Directors Group
Software Finance and Tax Executives Council
United States Chamber of Commerce
United States Council for International Business