Belastingdienst

Sustainability and Tax Reporting

Flaws in Country by Country reporting

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Any views expressed are personal views

Welcome and introduction

- Joined the NTCA five years ago.
- Transferred from tax advisory business (law firm and big 4).
- Focus on M&A, listed companies and financial services firms.

Netherlands Tax and Customs Administration:
- Country by Country reporting team (DAC4)
- Mandatory Disclosure steering group member (DAC6)
- Implementation team digital platforms (DAC7)
- Initiator local file test case
- Representative for Large Enterprises in NTCA working group on AI
- OECD delegate for the Netherlands for Country by Country reporting and Comparative Risk Assessment initiative (CoRA)
- Steering group member OECD Multilateral Joint Audit project
- Involved in ICAP 1.0 and 2.0 pilots and OECD digitalization of tax administrations
- Guest lecturer University of Amsterdam, Erasmus University, Dutch Association of tax advisors (NOB) and IBFD
- Author of the commentary on CbC for a publishing company.

Summary

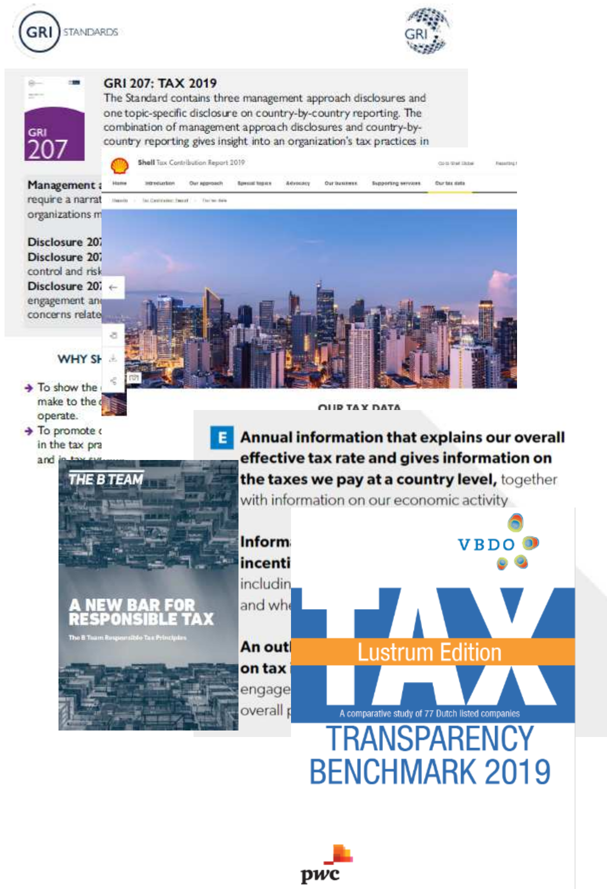
Key points:

- Different stakeholders, different perspectives
- All stakeholders require high quality, consistent and accessible data
- Data issues:
    1. Flaws and omissions
    2. Lack of convergence tax transparency standards
    3. Accessibility data for analysis

- Light shining through?

(Too many?) Tax transparency standards

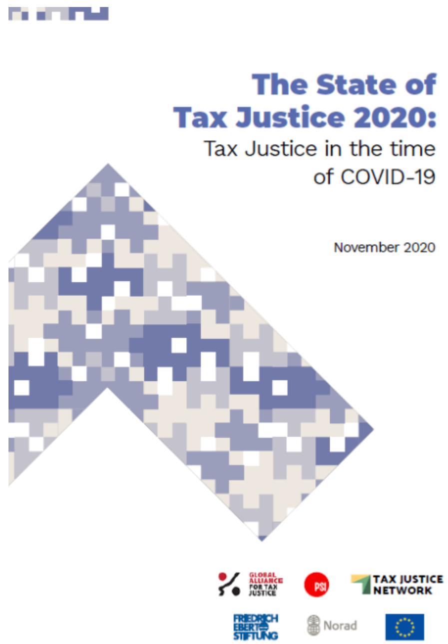
- OECD CbC
- EU standards:
  - EU Public CbC
  - EU Public ETR for corporates
  - EU Corporate Sustainability Reporting Directive
- Good Tax Governance initiative
- Global Reporting Initiative
- PwC / VDBO transparency benchmark
- B-Team
- HMRC: obligation to publish tax strategy
- etc.....



Data issues with CbC?

- "Three-fourths off the $245 billion corporate tax losses ($182 billion) are lost to tax havens with an effective tax rate below 10 per cent – primarily the Netherlands, the Cayman Islands, Hong Kong, the United Kingdom, Singapore, Bermuda, BVI, Luxembourg and Puerto Rico."
- "The Tax Justice Network's Corporate Tax Haven Index 2019 also estimated the UK spider's web, along with the Netherlands, Luxembourg and Switzerland together to be responsible for half of the world's corporate tax abuse risks ... This earned the group the name "axis of tax avoidance".

- Correct?

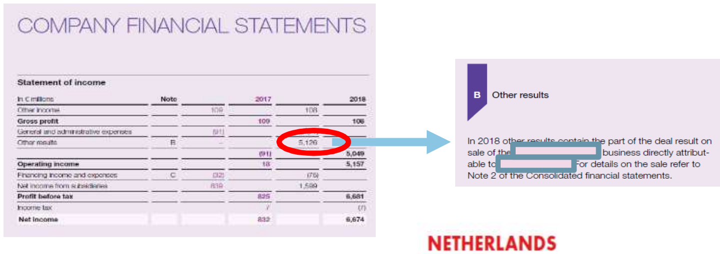


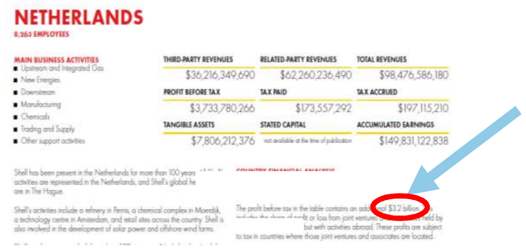
Data issues with CbC?

- Explanation sent to parliament 8 July 2020 and included on OECD website
- Numerous reasons for ETR of 10,6% in the Netherlands

Table 1: Corrected CbCR- profits

CbCR-positive profits (108 MNEs)	**24.839**
- Correction for dividends based on CIT filings	-2.706
- Correction for other biases based on annual reports	-6.530
CbCR-profits after corrections	**15.601**
CbCR-with positive profits after corrections (96 MNEs)	**17.263**
- Loss carry-overs (CIT-filings)	-4.211
CbCR-(excluding dividend, after loss carryovers)	**13.052**
CIT	**2.725**
ETR	**21%**





Income which is included in profit before income tax:

- Capital gains sale of (non)constituent entities
- Dividends from non-Constituent Entities (minority shares)
- Commercial revaluations of investment in subsidiaries / associates / joint ventures
- Share of result on associates and joint ventures
- Other participation results

Data issues with CbC?

- Are we alone? No, OECD Working Party 2 public comments:
  - UK: "... approximately £55 billion in intragroup dividends receivable included in CbCR profits, which represents 49% of domestic CbCR profit reported by UK MNEs."
  - UK: "HMRC analysis has found that loss carry forwards, exempt gains on share disposals and pension contributions to defined benefit pension schemes are particularly impactful"
  - Italy: "strong majority of Italian UPE have included dividends in the Profit".

Data issues with CbC?

- US statistics (https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report). The top 5 European countries with the highest profits (2018, jurisdictions with positive profit) are (USD):
  - UK 96.425.948.000
  - Netherlands 84.449.381.000
  - Ireland 65.881.339.000
  - Luxembourg 68.381.103.000
  - Switzerland 66.575.657.000
- At a substantial distance comes the largest economy in Europe, Germany with 20.038.645.000.
- The effect of including participation results is most notable in countries which are often used by US MNEs as European headquarters, but affects risk analyses in all countries.

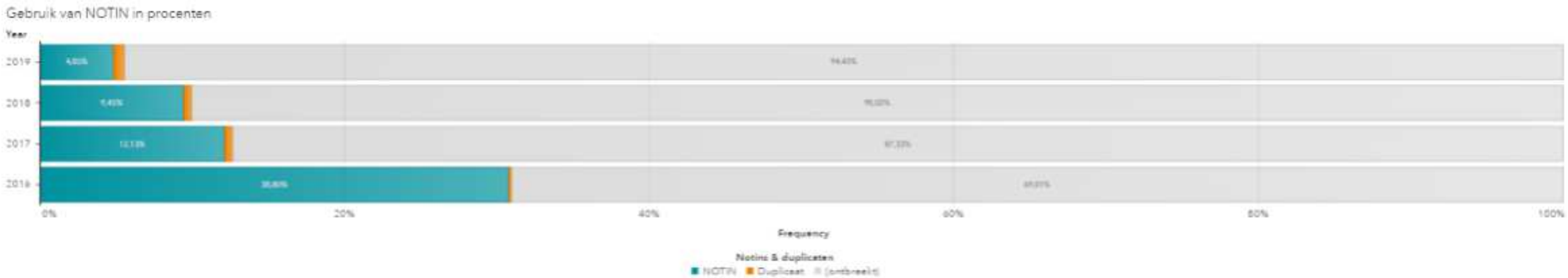
Data issues with CbC?

- The issue of participation results has been acknowledged in the Pillar 1 and 2 blueprints. (Blueprint Pillar 1 – section 435 onwards and Pillar 2 section 180 onwards):
  - *"Recognising the broad nature of the participation exemptions of many Inclusive Framework jurisdictions, <u>dividend income and gains or losses in connection with shares will be excluded from the Amount A tax base,</u> consistent with the approach adopted under Pillar Two."*
  - *"This <u>exclusion will also apply</u> where, in the absence of any disposal, the P&L statement accounts for gains (or losses) attributable <u>to changes in the value of shares using the fair value method</u>. (…)"*
  - *"As a corollary, <u>any profit or loss derived from using the equity method of accounting will also be excluded</u>, consistent with the approach adopted under Pillar Two."*
- OECD CbC 2020 review needs to align with pillar 1 / 2.

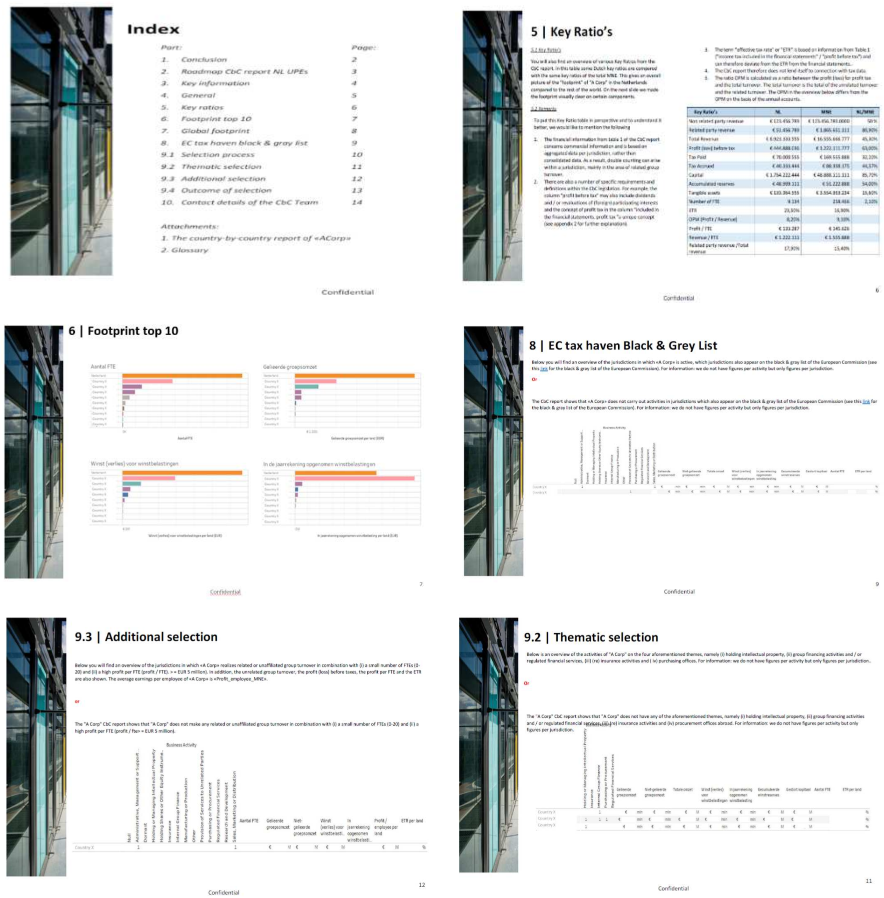
Data issues with CbC?

- There are also data quality issues.
- In Nov 2019 the OECD published a list of the most common errors, e.g.
  - Multiples
  - Taxes paid and accrued are included as a negative amount
  - No Tax Identification Number
  - Negative revenue / employees / tangible assets

- So for risk assessment, what do we do with those reports?
  - Cleaning of data, most common errors (TINs, multiples etc)



Data issues with CbC?



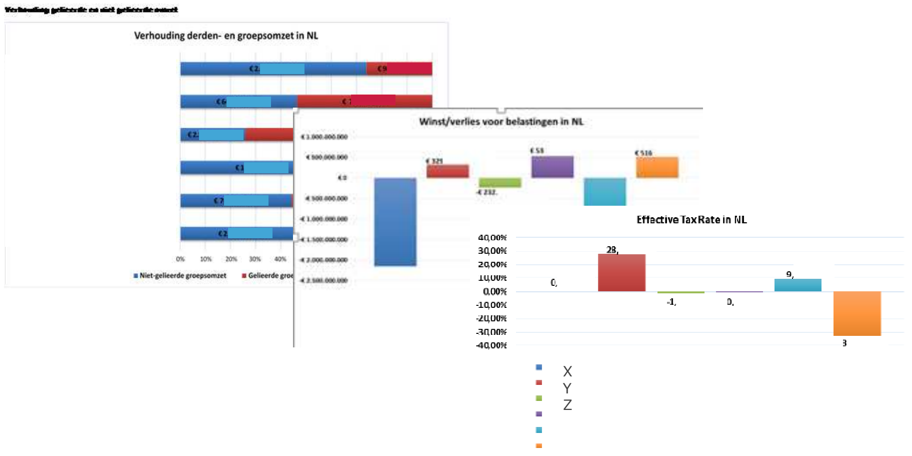
Risk analysis reports:

- Webbased using SAS VA software
- Available for all TP auditors
- Obligatory acceptance disclaimer on appropriate use and treaty confidentiality
- Selection of MNE and year
- Several tabs with different analysis
- Also link to internal system on competence.

For largest Dutch MNEs:

- Report is provided as pdf to case handling team and discussed with them.
- We are now working at integrating this report in our client handling system (combining all tax returns and other tax payer data per MNE).

Data issues with CbC?



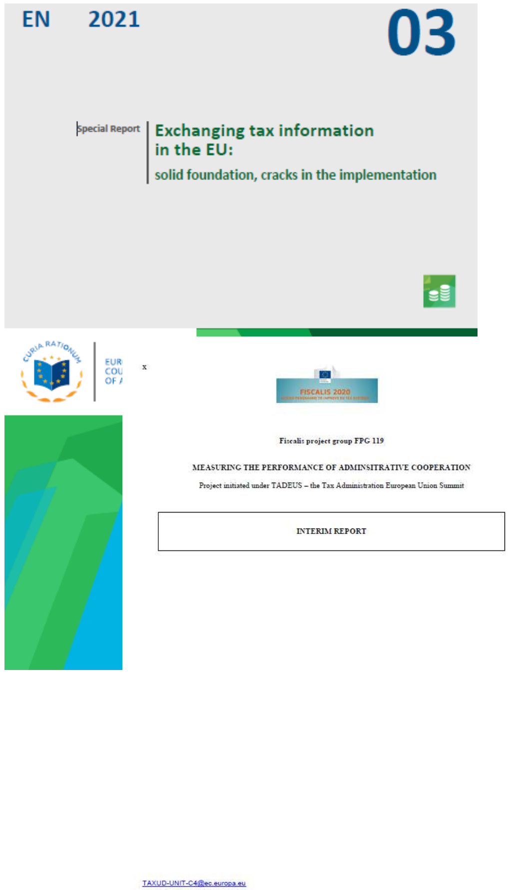
Year by year comparisons:

- Differences indicated with red or green e.g. >40% and absolute threshold of e.g. € 10 mio.
- Changes in countries flagged.
- Changes in activities and entities flagged.

- Comparative data for specific target groups (i.e. industries/sectors, e.g. insurance sector, energy sector, etc) upon request.
- Meetings organized with local tax inspectors for different industries comparing certain ratio's.

Data issues with CbC?

- European Court of Auditors Audit of EC, Cyprus, Italy, Netherlands, Poland and Spain (DAC1 to DAC5) during the period from 2014 to 2019.
- Audit of the Minimal use of DAC3 information: "*None of the Member States we visited systematically carried out a risk analysis of information in the central EU directory.*"
- DAC4 information is greatly under-used: "*The Member States we visited made very little use of incoming DAC4 information. Only one of them had established a rigorous system of risk analysis, which represents very good practice in the field. Following the risk analysis, the information was passed to regional tax teams, which used it in their taxation procedures.*"
- EC indicating willingness to help Member States
- EU Fiscalis Project Group 119 (DAC performance measurement)
  - DACs 1-4, VAT simultaneous controls (SC), SEOI, EOIR.



Convergence needed?

Comparison of data requirements

		Action 13 BEPS Country by Country reporting	Public Country by Country Reporting (EU Proposal)	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504
Basic information	Entity name	✓		✓		
	Activities	✓	✓	✓		
	Geographical location/Tax jurisdiction	✓		✓	✓	✓
	Project name				✓	✓
	Receiving government				✓	✓
Financial data	Revenue	✓	✓	✓		
	Profit or loss before tax	✓	✓	✓		
	Tangible assets o equivalents					
	Stated capital					
	Accumulated earn					
Tax data	Income taxes paic					
	Income tax charg					
Other data	Public subsidies r					
	Dividends					
	Royalties					
	License fees, rent					
	Signature, discov					
	Production entitle					
	Payments for infra improvements					
People data	Number of emplo					

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Comparison of legislative requirements

	OECD BEPS Action 13 CbC Report	Public Country by Country Reporting (EU Proposal)	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504
Who is affected	Multinational Enterprises (MNEs) with a consolidated group revenue in excess of EUR750 million.	Multinational Enterprises (MNEs) with a consolidated group revenue in excess of EUR750 million which are either EU-parented or have EU subsidiaries or branches.	CRD IV applies country by country reporting to 'institutions' in the EU. Institutions are defined as credit institutions and investment firms.	Large undertakings and public interest entities incorporated in the EU, active in exploration, prospection, development and extraction of minerals or oil and gas, or logging of primary forests. In addition, it will apply to many foreign-resident groups that are listed on an EU stock exchange under the FCA's Disclosure and Transparency Rules.	SEC registered companies engaged in the commercial development of oil, natural gas, or minerals.
When does it come into effect	The final Action 13 Report regulations was published on 5 October 2015. The first period in scope is accounting periods beginning on or after 1 January 2016.	EU proposal awaiting final adoption by EU Parliament and EU Council (expected by June 2021), before being transposed into local Legislation. Exact timing and periods affected unclear but expected from the commencement date of the first financial year beginning on or after one year from the transposition date.	Names and activities, turnover and number of employees were initially reported on 1 July 2014 based on most recently available financial statement. Subsequent full reporting is due by 31 December each year starting from 31 December 2015 relating to the most recently ended accounting period.	Reporting begins for financial years commencing on or after 1 January 2016 at the latest.	The final and amended rules from 2020 are effective 16 March 2021 (and require compliance after two-year transition period). Annual deadline requires an issuer to submit Form SD no later than 270 days following the end of its most recently completed fiscal year.
Threshold	Multinationals with consolidated group revenues of more than EUR750 million (or local equivalent).	Multinationals with consolidated group revenues of more than EUR750 million (or local equivalent).	No threshold.	Payments (singular or series) exceeding EUR100,000.	Payments (singular or series) exceeding USD100,000.
Data aggregation	— By country	— By country (EU Member States and Tax Havens on list yet to be drafted). — Aggregated on single line for all other territories.	— By country — By institution	— By country — By project — By government	— By country — By project — By government

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Onderdeel	OESO CbC-rapportage	EU publieke CbC-rapportage	GRI
Toepassingsbereik	Multinationale groepen met in het voorafgaande jaar een geconsolideerde bruto-groepsomzet van ten minste € 750.000.000.	Multinationale groepen met een geconsolideerde netto-groepsomzet van ten minste € 750.000.000.	Indien belasting een *material topic* is voor de multinationale groep die een GRI rapport opstelt.
Brongegevens	Consolidatierapportagepakketten, wet- ›oorgeschreven jaarrekeningen ›onderlijke entiteiten, geregu- jaarrekeningen, of financiële ›ns van het interne management.	Consolidatierapportagepakketten, wettelijk voorgeschreven jaarrekeningen van afzonderlijke entiteiten, gereguleerde jaarrekeningen, of financiële gegevens van het interne management.	De geconsolideerde jaarrekening of andere gepubliceerde financiële informatie.
	ming belastingjurisdicties waarin entiteiten van de multinationale voor belastingdoeleinden zijn igd.	Opsomming belastingjurisdicties waarin groepsentiteiten van de multinationale groep voor belastingdoeleinden zijn gevestigd.	Opsomming belastingjurisdicties waarin entiteiten van de multinationale groep voor belastingdoeleinden zijn gevestigd.
	ı van de inkomsten uit trans- met (i) gelieerde ondernemingen ie (ii) niet-gelieerde ondernemin- het totaal van (i) en (ii). In- ›n omvatten inkomsten uit ver- an voorraad en onroerend goed, ›n, royaltyrechten, rente, pre- n andere bedragen (bijvoorbeeld ıtele opbrengsten). Inkomsten ›en niet dividenden ontvangen lieerde ondernemingen.	Het bedrag van de netto-omzet, met inbegrip van de met verbonden partijen gerealiseerde omzet.	Omzet door verkoop aan derden en intragroep transacties met entiteiten in andere jurisdicties. Intragroep transacties binnen dezelfde belastingjurisdictie dienen geëlimineerd te worden, maar de organisatie kan deze informatie apart weergeven.
	drag van de winst of het verlies instbelasting (exclusief dividen- ıtvangen van groepsentiteiten).	Het bedrag van de winst of het verlies vóór winstbelasting.	Geconsolideerde winst/verlies voor belasting per jurisdictie.
	tale bedrag van feitelijk door alle entiteiten die voor belastingdoel- gevestigd zijn in de desbetref- belastingjurisdictie betaalde elasting (inclusief bronbelastin- › door andere entiteiten betaald ›t betrekking tot betalingen aan ›effende groepsentiteiten) gedu- het betreffende verslagjaar.	Het bedrag van de betaalde winstbelasting – dit is het bedrag van de winstbelasting die ondernemingen en bijkantoren die fiscaal inwoner zijn van het desbetreffende fiscaal rechtsgebied tijdens het desbetreffende boekjaar hebben betaald.	Het totale bedrag van in de desbetreffende belastingjurisdictie betaalde winstbelasting (inclusief bronbelastingen die door andere entiteiten betaald zijn met betrekking tot betalingen aan groepsentiteiten) gedurende het betreffende verslagjaar. Indien bronbelasting wordt betaald, kunnen de betreffende bedragen en jurisdic-

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Light shining through?

- Even with all the issues Tax transparency has greatly increased awareness of tax for all stakeholders.
- Exclusion of participation results from Pillar 1 / 2 and hopefully OECD CbC reporting??
- Convergence starting to arise. EC CSRD proposal fully supports the need for "*the worldwide convergence and harmonisation of sustainability reporting standards [and] the proposals of the International Financial Reporting Standards Foundation to create a new Sustainability Standards Board are especially relevant in this context (bringing together the GRI, SASB, IIRC, CDSB and CDP).*"
- CSRD requires machine-readable digital format information.
- OECD anonymized CbC data accessible via machine-readable digital format on OECD Corporate Tax Statistics database.
- EC public CbC proposal allows reporting under OECD CbC template.
- OECD providing free of charge CbC risk tool to countries (TREAT).
- NL providing assistance on CbC under EU technical Assistance program and OECD Tax Inspectors Without Borders.
- But,... once Directive or OECD minimum standard is concluded difficult to amend due to political required consensus.