State of Tax Justice 2022

STOPGAP EDITION

November 2022

TAX JUSTICE NETWORK

Stopgap edition note

Due to the OECD's failure to publish aggregated country by country reporting data as scheduled in July this year, the Tax Justice Network is unable to produce a full 2022 edition of the State of Tax Justice.

Without this data, we are unable to report new estimates – as countries face a global cost of living crisis – on how much tax governments are losing to global tax abuse committed by multinational corporations and the superrich.

Without this data, no one can hold the OECD accountable for the ten years in which it has held the G20 mandate to lead international efforts against corporate tax abuse. But the available evidence indicates that abuse has become worse, not better.

Without this data, governments and their public are unable to assess whether the OECD's proposed tax reforms are in their interests. In effect, the OECD's failure to provide data or country-level evaluations of the proposals, mean that the OECD is marking its own homework, and hiding its working.

Alongside this stopgap edition of the State of Tax Justice, the Tax Justice Network is publishing an open letter to the G20, raising our concerns about the OECD's poor handling of its responsibility over country by country reporting data – a global public good mandated to it by the G20 in 2013. We urge the G20 to move the mandate over country by country reporting data, and the broader effort to combat corporate tax abuse, into the daylight of democracy at the UN.

This stopgap edition of the State of Tax Justice details the importance and impact of country by country reporting data so far, provides an account of the OECD's underperformance in making data available and technically robust, and reiterates global calls for an inclusive UN role on taxing rights. Finally, we include our exchange of letters with the OECD over these same concerns.

Foreword

Hon. Irene Ovonji-Odida

Hon. Irene Ovonji-Odida is a panellist of the UN High Level Panel on International Financial Accountability, Transparency and Integrity, a member of the African Union/Economic Commission for Africa High Level Panel on Illicit Financial Flows out of Africa (the 'Mbeki panel') and a Tax Justice Network board member.

For years, the G77 group of lower-income countries has called for international tax rules to be set through a globally inclusive process, under UN auspices – just like those on trade, or climate for example. But the G20 group of countries has insisted for the last ten years on giving this mandate to the OECD, the rich countries' club.

The OECD created the Base Erosion and Profit Shifting (BEPS) 'Inclusive Framework' to allow non-member countries to participate, but the lack of genuine inclusion has been called out by all the engaged intergovernmental groups including the G-24, the South Centre and the African Tax Administrators Forum.

It is now clear that the OECD BEPS process has been neither inclusive nor effective. Already running years behind schedule, it now seems that none of the current proposals will be passed into legislation by the biggest OECD members countries, the EU and US. But there remains enormous pressure on non-OECD countries to make the deal binding on themselves.

As this report goes to press in November 2022, the OECD has still not published country-level estimates of the revenue impact. Coupled with the failure to allow timely access even to country by country reporting data, even highly aggregated, this prevents non-OECD countries from conducting any kind of fair assessment of their decision, or importantly of having informed political debate domestically.

These failures of inclusion and effectiveness have given new urgency to the push to move tax rule-setting to the United Nations. In May 2022, African finance ministers called for negotiations to begin on a UN tax convention, and the Africa

Group at the UN has tabled a draft resolution which is now under discussion.[1] That resolution could establish an intergovernmental body, as the G77 has also called for, so that tax rules could finally be set on a globally inclusive basis. The resolution could also create a Centre for Monitoring Taxing Rights, as recommended by the High-Level FACTI Panel on which I served – and which would deliver the full transparency and accountability with country by country reporting data that the OECD has also failed to do.

Many economically wealthy states that are OECD members are seeking to block the creation of an intergovernmental tax body, and a UN tax convention. Presumably they continue to prefer an ineffective body in which they exercise disproportionate power. But many people in OECD countries, too, face grave pressures of the inequality and climate crises. They, too, wish to end the social damage that corporate tax abuse inflicts on us all.

This report highlights an important way in which the OECD is failing everyone, driving inequality *between* and *within* countries. It should be a catalyst for the public around the world and especially within OECD countries to demand that their governments back a truly inclusive, transformative process to bring global tax to the UN.

[1] Ministerial statement (https://www.uneca.org/sites/default/files/com/2022/CoM%2022_Eng_%20Final%20Ministerial%20statement.pdf) which endorses the expert resolutions found here (https://www.uneca.org/sites/default/files/com/2022/E_ECA_CM_54_4_Rev.1_E.pdf)

Tax transparency is a global public good. The world needed it now more than ever.

In 2021, we reported that the world was losing over $483 billion a year in tax to multinational corporations and wealthy individuals using tax havens to underpay tax. That's equivalent to losing a nurse's yearly salary to a tax haven *every second*. Or put differently, was enough in 2021 to fully vaccinate the global population against Covid-19 three times over.[2]

These findings were reported in the 2021 edition of the State of Tax Justice, which we published in partnership with the Global Alliance for Tax Justice and Public Services International.

Today, people and governments everywhere are feeling the financial squeeze of multiple crises all at once - rising food prices, increasing inflation, skyrocketing fuel prices – the culmination of which is being referred to as a global cost of living crisis. At the same, the biggest multinational corporations have continued to report record-breaking profits and the number of billionaires has continued to grow around the world.

Now more than ever, as governments scramble to mitigate the financial squeeze on their people and economies, we needed transparency on how much tax is going unpaid by multinational corporations and the superrich.

But we don't have it.

The OECD, a club of rich countries and the world's leading rule-maker on global tax for the past 60 years, has failed this year to publish aggregated country by country reporting data as of writing – data which it was mandated by the G20 in 2013 to collect and publish. Without this tax transparency data and adequate time for analysis, the Tax Justice Network is unable this year to determine and report multinational corporation's global tax abuse.

[2] Tax Justice Network, 'State of Tax Justice 2021' (https://taxjustice.net/reports/the-state-of-tax-justice-2021/)

1 in 4 tax dollars lost to corporate abuse could have been prevented by tax transparency

We have, however, been able to assess the global cost of the OECD's failure to deliver on the country by country reporting mandate of the G20. Based on the most robust available estimates of the increased tax payments from multinationals that have been required to make themselves more accountable by publishing their country by country reporting, we conservatively estimate that cross-border corporate tax abuse could have been reduced by US$89 billion in the last year of available data. This reduction would have amounted to 28 per cent of the US$312 billion we reported to have been lost to cross-border corporate tax abuse in the last year of available data.

In other words, at least 1 of every 4 tax dollars lost to multinational corporations using tax havens could have been prevented by requiring multinationals to make their country by country reporting publicly available.

The OECD's failure is costing all of us far too much. It's clear that the mandate for the global public good of tax transparency should be given instead to the UN – along with the remit to convene a globally inclusive process to set the tax rules, where the OECD has singularly failed to make concrete progress over the course of a decade of talks.

What is country by country reporting and why it's kryptonite for corporate tax abusers

Country by country reporting is an accounting measure designed specifically to expose, and consequently deter, multinational corporations shifting their profit into tax havens in order to underpay tax.

Every year, multinational corporations shift over US$1 trillion from the countries where they genuinely do business – the countries where they sell goods and services, and employ staff – to tax havens where they pretend to do business, for example, by renting a mailbox or setting up a shell company that only exists on paper.

By shifting their profits into tax havens and declaring those profits were made in those tax havens instead of in the countries where they were actually made, multinational corporations avoid paying tax where they genuinely do business and genuinely make profit. And because tax havens collect little to no tax on profits, multinational corporations end up paying little to no tax at all on the profits they make around the world.

Multinational corporations avoided paying US$312 billion in tax on their profits in a single year by shifting profit in this way into tax havens, the State of Tax Justice reported in 2021.

Multinational corporations have gotten away with profit shifting for years due to the lack of transparency required from them when they report their profits. For a century, multinational corporations were required to only report how much profit and loss they made in total at a global level. They did not have to report how much profit and loss they made in each country they operated in.

This meant multinational corporations could move money around the world to make it look like they didn't make any profit in the countries where they would have to pay tax and, coincidentally, made billions in profit in tax havens where they sell no goods or services, employ no staff and have no offices, factories or tangible assets.

Country by country reporting was designed to expose this profit shifting. The reporting method requires multinational corporations to disclose how much profit or loss they make in each country they operate in. This meant multinational corporations would no longer be able to shift profits into tax havens without everybody seeing it.

By specifically targeting the secrecy that gives multinational corporations the power to hide profits in tax havens, country by country reporting is like kryptonite for corporate tax abusers, sapping away their ability to underpay corporate tax without getting caught.

Potential benefits for society are huge. Studying multinational banks' reaction to their public country by country reporting requirement in 2014, we expect multinationals operating in tax havens to pay 2.1 percentage points more taxes when country by country reports are made publicly available. This estimate takes into consideration that most multinationals already file private country by country reports to their tax authorities.

Multiplying this expected increase in effective tax rates by the total corporate profits to which this increase can be expected to apply (US$ 4.27 trillion) yields an estimate of recovered tax revenues of US$89.5 billion a year. This is more than a quarter of the total tax losses that result from global profit shifting.[3]

How the OECD failed to deliver country by country reporting a decade on

The Tax Justice Network developed the world's first proposal for an accounting standard for country by country reporting in 2003. The OECD opposed country by country reporting for years but was finally mandated by the G20 in 2013 to collect and publish country by country reporting data.

Seven years later, the OECD published the first set of country by country reporting data in July 2020.[4] The data, which pertained to companies' activities in 2016, was published half a year past the OECD's own deadline for the publishing the data, January 2020. The second set of data, pertaining to companies' activities in 2017, was published in July 2021.

The two previous editions of the State of Tax Justice used these data sets to determine how much profit was being shifted into tax havens in a given year and consequently how much tax multinational corporations were underpaying in a given year.

As of writing, the OECD has yet to publish country by country reporting data in 2022.

The Tax Justice Network sent a letter in October 2022 to the newly appointed OECD Secretary-General Mathias Cormann raising concerns about the delayed country by country reporting data, among other concerns about the robustness of the data.[5] In his response, Mr. Cormann wrote that the data will be published in 2022 but did not specify when exactly. [6]

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[3] The detailed analysis can be found at Appendix 1
[4] Organisation for Economic Cooperation and Development, 'Corporate Tax Statistics SECOND EDITION' (https://www.oecd.org/tax/tax-policy/corporate-tax-statistics-second-edition.pdf)
[5] The full letter can be read at Appendix 3
[6] The full letter can be read at Appendix 4

This latest set of OECD country by country reporting data will pertain to companies activities in 2018, making the data four years old by the time the OECD publishes it.

With the OECD data now delayed so far into the calendar year, the Tax Justice Network no longer has enough time to analyse the data and produce a 2022 edition of the State of Tax Justice before the end of the year.

It has been nearly a decade since the OECD was directed by the G20 to collect and report country by country reporting data. The OECD has to date underwhelmingly published only two years of data, both of which were published behind schedule, and has failed to deliver the latest set of data in time for the data to be adequately analysed and publicly discussed before the year's close.

But failing to make the data publicly available in a timely and regular manner isn't the only way in which the OECD has mishandled the country by country reporting mandate.

How the OECD watered-down its version of country by country reporting

We, and many other tax experts and campaigners, have repeatedly pointed out in the past the significant technical weaknesses in the standard for country by country reporting that the OECD developed and uses to collect and publish data.

When the G20 mandated the OECD to collect and publish country by country reporting data, the G20 also mandated the OECD to develop its own international standard for the accounting method. The Tax Justice Network warmly welcomed the OECD standard for country by country reporting in 2015, which follows closely the original draft standard that we had promoted since 2003.[7] We noted, however, significant issues in the technical robustness of the standard.

Most recently, the Tax Justice Network raised these issues in an open letter sent in October 2022 to OECD Secretary-General

[7] For a more detailed discussion of the history and development of this important tool, see Cobham, Janský and Meinzer, 2018, 'A half century of resistance to corporate disclosure', *Transnational Corporations* 25(3), https://unctad.org/system/files/official-document/diaeia2018d5a2_en.pdf.

Mathias Cormann. Mr. Cormann’s response did not provide us with adequate reassurance that these issues will be resolved.

We repeat these issues here.

The OECD standard falls short of the original Tax Justice Network proposal in three main ways. First, it excludes key variables on the activity of multinational corporations: turnover and employee numbers are included, but payroll and tangible assets were dropped. These variables are essential for gaining better clarity on where multinational corporations are genuinely doing business and where they’re simply pretending to operate, in order to underpay tax.

Second, the OECD standard excludes measures of intra-group activity that are critical to understand profit shifting. Intra-group activity is the activity that takes place between a multinational corporation’s various regional and local offices, firms and subsidiaries – a good number of which can often be shell companies.

Moving money between these entities is a key method multinational corporations use to shift profits into tax havens. For example, a multinational might charge itself to use its own logo by having its subsidiary based in a tax haven collect logo royalty fees from the rest of its offices and subsidiaries around the world. Similarly, it’s not uncommon for a multinational’s subsidiary to lend to other subsidiaries in the group at interest rates that are much higher than the interest rates available from lenders on the market. By having subsidiaries located outside of tax havens pay these kinds of costs to those located inside of tax havens, the multinational effectively shifts the profit it makes around the world into tax havens.

While the OECD standard included intra-group sales, it did not include intra-group purchases, nor intra-group royalties and interest. This left a significant scope of intra-group activity that can be abused to shift profit uncovered by the OECD’s version of country by country reporting.

The third and most powerful criticism of the OECD standard relates to the definition of variables. Countries and multinationals have been given needless room to vary the definitions they use. And even where the OECD standard does provide definitions, these are typically not robust from an accounting perspective.

The most egregious example of the consequences of this is the treatment of dividends and financing arrangements. The lack of robust definitions on these variables has resulted in some multinational corporations reporting very different figures for their global profits when reporting under the OECD standard, compared to what they state in their annual accounts. These reported global profits sometimes differ by tens of billions.

The OECD had committed to a review of its standard after five years of the BEPS (Base Erosion and Profit Shifting) Action Plan, and accordingly held a public consultation in 2020. The response was overwhelming, with investors and asset managers representing trillions of dollars of shareholding aligning almost unanimously with the positions outlined above, and calling for the OECD to converge instead to the highly respected, Global Reporting Initiative (GRI) standard, which is considered to be the gold standard for country by country reporting.

As Mr Cormann's letter confirms, some two and a half years later the OECD has neither concluded its review, nor responded to these clear demands from stakeholders.

How the OECD's version of country by country reporting kept financial secrecy intact

The original Tax Justice Network proposal for country by country reporting required that multinational corporations make their country by country reports publicly available. As a transparency measure, country by country reporting data could only be effective at exposing and consequently deterring profit shifting if the reports are made public for everybody to see.

The OECD constructed a much more complex and opaque alternative that allowed multinational corporations to instead privately disclose their country by country reporting to their tax authorities. This data was then aggregated and anonymised by the OECD before being made public.

As a result, the 2020 and 2021 editions of the State of Tax Justice were able to report how much profit multinational corporations admitted they were shifting into tax havens – and from this data we were able to deduce how much tax multinational corporations underpaid as a result – but we could not see which multinational corporations were the ones doing the profit shifting and underpaying tax, and the country-level results are inevitably subject to some small but needless level of uncertainty.

Under the OECD standard, multinational corporations are required to confess their profit shifting activity but allowed to stay anonymous when doing so, effectively keeping the secrecy that multinational corporations used for decades to shift profit intact, shielding corporate tax abusers from accountability and, ultimately, negating the point of the transparency measure.

At least 1 of every 4 tax dollars lost to multinational's profit shifting activity could have been prevented if this secrecy was breached.

The world is leaving the OECD behind

OECD staff working on country by country reporting have shown a valuable commitment to ensuring that country by country reporting data is collected and made available. It is clear, however, that the organisation has been unable or unwilling to provide the resources needed to make sure this role can be performed effectively.

Unsurprisingly, the OECD is being left behind today – by proactive countries, by regional blocs and by multinational corporations voluntarily choosing meaningful transparency over the secrecy afforded to them by the OECD. The policy choices now being made are indicative of a world tilting away from unfettered wealth accumulation; fearful of the consequences of inaction in the face of deepening inequality, state capture and climate damage. Whether this shift represents self interest, legal obligations as duty bearers for human rights, or a powerful reconnection with our moral compass, tolerance for the obscene, and increasing, levels of inequality has reached a point that is demanding legitimate collective action.

A number of countries have recently adopted more robust standards of country by country reporting that are closer to the Tax Justice Network's original proposal. In October 2022, Australia became the first country to require multinational corporations in its jurisdiction to make their country by country reports public.[8]

The US began publishing its aggregated country by country reporting ahead of the OECD. Although the US data is anonymised like the OECD data, the US has regularly published data in a timely fashion each year. Moreover, each US data set has pertained to the most recent calendar year when published, unlike the OECD which has to date only published data sets for 2016 and 2017. Spain now publishes its own aggregate data also.

Also going beyond the OECD although not as far as Australia, the EU decided in 2021 to require a significant share – but not all – of the country by country reporting data that its members collect to be made publicly available.

But perhaps most significantly, a number of major multinational corporations including Vodafone and Philips have recently adopted the GRI Tax standard. These multinational corporations will voluntarily make their country by country reports publicly available, forgoing the financial secrecy inexcusably afforded to them by the OECD's standard.

Investors meanwhile, tired of waiting for a response from the OECD to their calls for it to converge to the GRI standard, have taken increasingly direct action. Working with our partners CICTAR and the FACT Coalition among others, investors with trillions of dollars of assets have begun to table resolutions calling for public country by country reporting at the annual meetings of companies such as Amazon.[9] In addition, investors have written to the US stock exchange regulator, the SEC, calling for it to use its power to require public reporting from all US listed companies.

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[8] Tax Justice Network, 'Australia's new transparency law is "tax havens' kryptonite" (https://taxjustice.net/press/australias-new-transparency-law-is-tax-havens-kryptonite/)

[9] FACT Coalition Newsletter June 2022 (https://thefactcoalition.org/the-amazon-shareholders-representing-144-billion-endorse-tax-transparency-shareholder-proposal-co-filed-by-fact-coalition-member-just-the-facts-june-6/)

Global momentum to move country by country reporting to the UN

In 2021, the UN High-Level Panel on International Financial Accountability, Transparency and Integrity (FACTI panel) called for the creation of a Centre for Monitoring Taxing Rights "to collect and disseminate national aggregate and detailed data about taxation and tax cooperation on a global basis", reflecting that "[a] body with universal membership is needed to make detailed data available for analysis and research" and that "[t]he bare minimum to begin addressing the massive scale of tax avoidance and evasion is to obtain consistent annual data on a global basis."

As demonstrated above, the OECD is not meeting this "bare minimum". If anything, the OECD's performance has deteriorated over time, missing its own deadlines for publishing country by country reporting and failing to do so at all so far in 2022. Nearly 10 years since the G20 mandated the OECD to collect and publish country by country reporting data, the OECD's mishandling of this mandate today cannot be said to be teething problems.

Understandably, the countries of the world are now looking to the UN. Last month, the Africa Group submitted a draft resolution at the UN General Assembly to begin negotiations on a UN tax convention, which UN Secretary General António Guterres has announced his support for.[10]

The UN tax convention could potentially introduce a new Centre for Monitoring Taxing Rights at the UN, as proposed by the FACTI panel. The Centre would be the ideal body to pick up the duty of collecting and publishing robust public country by country reporting.

Country by country reporting is a global public good. It should be delivered and maintained by an inclusive, global public body – not a club of rich countries, a number of which rank among the

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[10] Report of the UN General Secretary on International coordination and cooperation to combat illicit financial flows (https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/466/94/PDF/N2246694.pdf?OpenElement)

world's biggest enablers of corporate tax havenry and financial secrecy.

In our open letter to the G20 published today with this report, we urge G20 leaders to back global calls for a new, inclusive UN role on taxing rights and to move the country by country reporting mandate to the UN, where the G20's 2013 demand for tax transparency can finally be truly realised.[11]

The G20 can bring this global public good into the daylight of democracy at the UN by either asking the UN tax committee to take up responsibility for country by country reporting data or by backing the creation of the Centre for Monitoring Taxing Rights at the UN through a UN tax convention.

Only then can we achieve the tax transparency that governments and people around the world urgently needed this year to fight the scourge of profit shifting and recover the hundreds of billions of public money we all lose every year.

[11] See Appendix 4 for the full letter

Appendix 1

Methodology for estimating the benefits of public country by country reporting

How much could societies around the world benefit from transparency on multinationals' profits? Building on the existing empirical evidence on the effects of public country by country reporting (CbCR) requirements, we provide an estimate of the tax revenues that governments currently forego by not requiring public country by country reporting.

Most large multinational corporations are already obliged to file a "private" country by country report to tax authorities. The public does not have direct access to these reports, but only sees aggregated data (when the OECD publishes them, which, as we describe in this report, has not yet happened this year). We therefore analyse the potential benefits of switching from a private to a public CbCR requirement. To estimate the additional tax revenues after such a switch, we would ideally like to know how much profits are shifted under the private regime, how much of these profits would not be shifted under a public regime, and how much taxes would be paid on these non-shifted profits. However, by the nature of the non-public reporting scheme and the phenomenon itself, we are unable to directly reliably estimate these magnitudes.

Instead, we focus on the expected change in the effective tax rate (ETR) of a multinational that switches from being required to file a private to a public country by country report. We then multiply this expected change in the ETR with the amount of profit affected by a potential public CbCR requirement.

Table 1: Estimates and sources to estimate tax benefits from public CbCR

	Estimate	Source
Δ ETR public CbCR	3.6 p.p.	Overesch and Wolff (2021)[12]
Δ ETR private CbCR	1.5 p.p.	Joshi (2020)[13]
Δ ETR private-to-public CbCR	2.1 p.p.	Equation (2)
Total profits of multinationals operating in tax havens	USD 4.26 trillion	Equation (3)
Recovered tax revenues	USD 89.5 billion	Equation (4)

Change in effective tax rate

So far, no multinational has switched from a private to a public regime. We therefore base our estimates on existing evidence on (i) the change in the ETR of EU banks that have switched in 2014 from no CbCR to a public CbCR requirement, and (ii) the change in the ETR of large MNEs that switched from no CbCR to a private CbCR requirement in 2016. To obtain an estimate of how the ETR should change with a switch from private to public CbCR, we deduct the ETR change associated with the introduction of private CbCR from the ETR change associated with the introduction of public CbCR:

$$\Delta ETR_{Private-to-Public} = \Delta ETR_{Public} - \Delta ETR_{Private} \qquad (1)$$

To estimate the *change in ETR following a regulatory change from no CbCR to a public CbCR requirement*, we build on Overesch and Wolff (2021)[14] who investigate multinational banks' reaction to the public CbCR requirement which has been implemented by the European Commission as part of the Capital Requirements Directive IV in 2014. In a difference-in-difference

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[12] Michael Overesch and Hubertus Wolff, 'Financial Transparency to the Rescue: Effects of Public Country-by-Country Reporting in the European Union Banking Sector on Tax Avoidance*', *Contemporary Accounting Research*, 38/3 (2021), 1616–42.
[13] Preetika Joshi, 'Does Private Country-by-Country Reporting Deter Tax Avoidance and Income Shifting? Evidence from BEPS Action Item 13', *Journal of Accounting Research*, 58/2 (2020), 333–81.
[14] Overesch and Wolff, 'Financial Transparency to the Rescue', 1616–42.

analysis, the authors find that multinational banks that are active in tax havens increase their ETR by 3.6 percentage points more in reaction to the reporting requirement, compared to banks that do not have any tax haven activities.

While hardly comparable to an average non-financial firm, multinational banks are similar to an average multinational with tax haven activities in terms of firm characteristics, like size and profits, and therefore a suitable reference group[15]. However, there are good reasons why banks should react differently to public CbCR requirements, compared to non-financial firms. On the one hand, profit shifting could be easier for banks because they can easily manipulate transfer prices, like interest margins or service fees, and strategically chose debt and equity to shift profits[16]. As a consequence, the positive effect of mandatory disclosure could be stronger for banks, if CbCR inhibits profit shifting, or weaker, if banks can shift profits, notwithstanding their CbCR. On the other hand, banks are more heavily regulated than non-financial firms[17] which could render the additional effect of CbCR (ie, the effect on top of all other existing regulations) marginal. Their lower values of nontangible assets should also hamper profit shifting. Overall, it is likely that both financial and non-financial firms have access to channels of profit shifting. We therefore do not take a stance on which of these possible mechanisms dominates. Instead, we keep the 3.6 percentage points as our best estimate for how multinationals with business in tax havens adapt their ETR in response to a regulatory change from none to public CbCR requirements.

To estimate the change in ETR following the regulatory change from no CbCR to private CbCR requirements, we build on the estimates provided by Joshi (2020)[18], who analyses the effect of the introduction of private CbCR for firms with a revenue of US$750 million or higher in the European Union in 2016. Her difference-in-difference estimate compares the change in ETRs

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[15] Dhammika Dharmapala and Nadine Riedel, 'Earnings Shocks and Tax-Motivated Income-Shifting: Evidence from European Multinationals', *Journal of Public Economics*, 97 (2013), 95–107.
[16] Julia Merz and Michael Overesch, 'Profit Shifting and Tax Response of Multinational Banks', *Journal of Banking & Finance*, 68 (2016), 57–68.
[17] Ross Levine, *The Corporate Governance of Banks: A Concise Discussion of Concepts and Evidence* (2004), MMMCDIV.
[18] Joshi, 'Does Private Country-by-Country Reporting Deter Tax Avoidance and Income Shifting?', 333–81.

of firms required to provide private CbCR reports with those that are unaffected by the regulation. The estimate suggests that affected multinationals pay between 1 and 2 percentage points higher ETR after the introduction of the rule, compared to unaffected control firms. For our calculation, we take the average value of this estimate and assume that a switch from no to private CbCR results in an increase of ETRs of 1.5 percentage points.

We can now estimate the change in ETR for firms with operations in tax havens when private CbCR requirements are substituted by public CbCR requirements:

$$\Delta ETR_{Private-to-Public} = 3.6\,p.p. - 1.5\,p.p. = 2.1\,p.p. \qquad (2)$$

Profits affected by the implementation of public CbCR

Global corporate profits of multinationals were estimated by the State of Tax Justice 2021[19] to amount to US$4.7 trillion in the year with latest available data, ie 2017. Our analysis is confined to those profits made by multinationals that operate in tax havens. The banking sector evidence from Overesch and Wolff (2021)[20] suggests that 90.6% of all multinational bank profits are made by banks who operate in a tax haven. Correspondingly, we assume that 90.6% of total profits of all multinationals are made by firms operating in tax havens. The US$ value of global profits of firms operating in tax havens is then:[21]

$$Profits_{MNEs\ in\ tax\ havens} = 90.6\% \times USD\ 4.7\ trillion$$
$$= USD\ 4.26\ trillion \qquad (3)$$

[19] Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2021* (16 November 2021) <https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH.pdf> [accessed 7 May 2022].
[20] Overesch and Wolff, 'Financial Transparency to the Rescue', 1616–42.
[21] We exclude profits of banks who have been subject to public CbCR since 2014 (USD 382 millions) from our analysis. As they had already filed public country by country reports as part of the 2014 reform, the 2016 change has not affected them.

Additional tax revenues from public CbCR

Multiplying the estimated profits of multinationals operating in tax havens with their expected ETR change after the introduction of public CbCR yields an estimate for the additional tax revenues from implementing public CbCR:

$$\Delta Tax\ Revenue_{Private-to-public} = 2.1\% \times USD\ 4.26\ trillion = USD\ 89.5\ billion \quad (4)$$

The additional tax revenue of US$89.5 billion represents 28.5% of tax losses from profit shifting, which are estimated at more than US$312 billion by the State of Tax Justice 2021[22].

[22] Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2021*.

Appendix 2 -Letter to OECD Secretary-General

14 October 2022

TAX JUSTICE NETWORK

Tax Justice Network Ltd
C/O Godfrey Wilson Ltd,
5th Floor Mariner House,
62 Prince Street,
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Company No 05327824

Date:
14 October 2022

To:
Secretary-General Mathias Cormann, Organisation for Economic Cooperation and Development

Address:
2, rue André Pascal, 75016 Paris, France

via email

Dear Secretary-General Cormann,

Country by country reporting data on corporate tax abuse

I write to you to raise serious concerns over the OECD's problematic stewardship of a global public good: the country by country reporting data of multinational companies. These concerns, set out below, relate to the failure to ensure the technical robustness of the OECD standard; and to the failure to make aggregate data public in either a timely or a regular fashion.

Context and importance of the data

In the State of Tax Justice reports published jointly by Tax Justice Network with the Global Alliance for Tax Justice and Public Services International, we have used the data that have been made available to identify corporate tax abuse resulting in more than US$300 billion of annual tax losses around the world, and in excess of a trillion dollars of illicit financial flows.[1] These revenue losses undermine governments and public services around the world. It is estimated that each year 17 million more people could benefit from clean water and 34 million from basic sanitation, if revenue losses due to global tax abuse (corporate and individual) were reversed. Over a ten-year period, these gains would be associated with the prevention of 600,000 child deaths and 73,000 maternal deaths.[2]

The Tax Justice Network believes our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to the needs of everyone. But under pressure from corporate giants and the super-rich, our governments have programmed these systems to prioritise the wealthiest over everybody else, wiring financial secrecy and tax havens into the core of our global economy. This fuels inequality, fosters corruption and undermines democracy. We work to repair these injustices by inspiring and equipping people and governments to reprogramme their tax and financial systems.

[1] GATJ, PSI & TJN, 2021, *State of Tax Justice 2021*, London: Tax Justice Network, https://taxjustice.net/reports/the-state-of-tax-justice-2021/.

[2] TJN, 2021, *Tax Justice and Human Rights: The 4 Rs and the realisation of rights*, London: Tax Justice Network, https://taxjustice.net/reports/tax-justice-human-rights-the-4-rs-and-the-realisation-of-rights/.

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One element of the Tax Justice Network's approach, since our formal establishment in 2003, has been to promote a series of measures now commonly referred to as the ABC of tax transparency:

- Automatic exchange of financial account information;
- Beneficial ownership transparency through public registers; and
- Country by country reporting, publicly, by multinationals.

As you may know, each of these measures was initially resisted and written off as unrealistic by the OECD – but within a decade, each one had been adopted, in principle at least, by the (then) G8 and G20 groups of countries as part of the global policy agenda from 2013.

The G20's direction to the OECD to develop a standard for country by country reporting for multinationals gave rise to what might reasonably be described as the one concrete achievement of the first Base Erosion and Profit Shifting process (The BEPS Action Plan, 2013-2015). The G20 set a single goal for the OECD, of reducing the misalignment between where multinationals declare their profits, and the location of their real economic activity.

Country by country reporting requires multinational groups to reveal the extent and nature of their profit 'misalignment', and creates a level playing field for transparency with stand-alone domestic firms that publish annual accounts. In that way, the requirement for multinationals to report this data provides the accountability measure for the OECD, to demonstrate any progress made in reducing misalignment; and for multinationals and tax authorities to be held accountable by the public for curbing tax abuse. It also ensures accountability to investors, who tend to suffer higher volatility with no increase in return when companies engineer lower effective tax rates;[3] and to workers, who are forced to bargain at a disadvantage when the true profitability of their operations is hidden.

The Tax Justice Network warmly welcomed the OECD standard for country by country reporting, which follows closely the original draft international accounting standard that we had promoted since 2003.[4] We noted, however, two significant issues: the technical robustness of the standard, and the severely limited availability of the data.

Technical flaws in the OECD standard

The OECD standard falls short of the original Tax Justice Network proposal in three main ways. First, it excludes key variables on the activity of multinationals: turnover and employee numbers are

[3] Brooks, Godfrey, Hillenbrand & Money, 2016, 'Do investors care about corporate taxes?, *Journal of Corporate Finance* 38, pp.218-248, https://doi.org/10.1016/j.jcorpfin.2016.01.013.

[4] For a more detailed discussion of the history and development of this important tool, see Cobham, Janský and Meinzer, 2018, 'A half century of resistance to corporate disclosure', *Transnational Corporations* 25(3), https://unctad.org/system/files/official-document/diaeia2018d5a2_en.pdf.

included, but payroll and tangible assets were dropped. Second, it excludes measures of intra-group activity that are critical to understand profit shifting: intra-group sales are included (but not purchases), while intra-group royalties and interest are excluded.

The third and powerful criticism of the OECD standard relates to the definition of variables. In part, countries and multinationals have been given needless room to vary their approach. In part, the definitions that are clearly given are not robust from an accounting perspective. Most egregiously, the treatment of dividends and financing arrangements has been seen to result in OECD standard measures of global profit diverging materially, sometimes in the tens of billions, from that which would be reported in the same companies' annual accounts or under the highly respected Global Reporting Initiative (GRI) standard, 'Tax: 207', which is increasingly being adopted for voluntary reporting.

The OECD had committed to a review of its standard after five years of the BEPS Action Plan, and accordingly held a public consultation in 2020. The response was overwhelming, with investors and asset managers representing trillions of dollars of shareholding aligning almost unanimously with the positions outlined here, and calling for the OECD to converge to the GRI standard.[5]

To the best of our knowledge, some two and a half years later, the OECD has neither concluded its review nor responded to these clear demands from stakeholders.

<u>OECD failures to make data available</u>
The other major concern relates to the limits that the OECD has created on access to the data. Rather than follow the original Tax Justice Network proposal for company-level reporting data to be published each year, the OECD constructed a much more complex and opaque alternative. This involves data being provided privately only, to tax authorities. Worse, the data is only required to be provided to the home country tax authority; and an entire mechanism for information exchange was constructed to allow access for *some* other tax authorities.

As the UN's Financing for Sustainable Development Report makes clear each year,[6] it is almost exclusively OECD member country authorities who are able to access this data – despite the fact that lower-income countries lose the largest share of their revenues to corporate tax abuse, not the OECD's high-income members.[7]

[5] See summary of submissions at 'Investors demand OECD tax transparency', 2020, *Tax Justice Network blog*, https://www.taxjustice.net/2020/03/19/investors-demand-oecd-tax-transparency/.
[6] See Table III.A.3: Participation in international tax cooperation instruments, in e.g. FSDR 2022: https://developmentfinance.un.org/fsdr2022.
[7] See *State of Tax Justice* reports, and international academic research surveyed in chapter 4 of Cobham & Janský, 2020, *Estimating Illicit Financial Flows: A Critical Guide to the Data, Methodologies, and Findings*, Oxford University Press: Oxford, UK, available in open access via

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The most immediate concern over the OECD's stewardship of country by country reporting, however, relates to the aggregate data that the organisation agreed to publish. Starting with the first year of widespread adoption of reporting requirements under BEPS, 2016, the OECD committed to collate the aggregate reporting of companies in each of the participating member states and other countries, and to publish this as part of its 'Corporate Tax Statistics'. These aggregate data do not identify individual companies' profit shifting, but do provide a clearer insight than any other source into jurisdiction-level deviations.

The most recent data reveal, for example, that OECD member countries and their dependencies were responsible for seven of every ten dollars lost around the world to corporate tax abuse (see State of Tax Justice 2021). The aggregate data are also crucial for countries without good access to company-level reporting to be able to assess the likely impact of proposed tax reforms. Without this, governments and their parliaments and citizens are being asked to 'sign a blank cheque' when unquantified OECD proposals are put in front of them.

The first year of data, on companies' activities in 2016, was originally understood to be scheduled for publication with the Corporate Tax Statistics release of January 2020, but delayed until July 2020. The second year of data, on companies' activities in 2017, was released in July 2021. The third year of data has not yet been released. For comparison, the United States will unilaterally publish in November the aggregate country by country reporting data for its multinationals, for the year 2020 – putting it a full two years ahead of the OECD, despite the latter's commitment to provide this global public good.[8]

Were the OECD's data only to be released in 2023, it would entail a five-year delay and even more severely limit the relevance of the information, and the accountability of the OECD and other actors for any progress against corporate tax abuse.

OECD staff working on country by country reporting have shown a valuable commitment to ensuring that member countries cooperate and that aggregate data are made available. It is clear, however, that the organisation has been unable or unwilling to provide the necessary resources to ensure that this role can be performed effectively. This is, sadly, in line with the OECD's failure to support publication of company-level data from the outset, or even to guarantee access for all tax authorities.

As a result, the OECD is being left behind – by individual countries like the US maintaining regular and timely publication of

https://global.oup.com/academic/product/estimating-illicit-financial-flows-9780198854418?cc=es&lang=en&#.

[8] See https://www.bea.gov/data/intl-trade-investment/activities-us-multinational-enterprises-mnes - the release of 2020 data is scheduled for 18 November 2022.

aggregate data; by the EU deciding to require the direct publication of significant company-level data; and by the growing, voluntary adoption of the GRI standard by individual companies.

In 2021, the UN High-Level Panel on International Financial Accountability, Transparency and Integrity (FACTI) called for the creation of a Centre for Monitoring Taxing Rights "to collect and disseminate national aggregate and detailed data about taxation and tax cooperation on a global basis", reflecting that "A body with universal membership is needed to make detailed data available for analysis and research" and that "The bare minimum to begin addressing the massive scale of tax avoidance and evasion is to obtain consistent annual data on a global basis."[9]

It is, sadly, clear that the OECD is not meeting this 'bare minimum'. Moreover, the OECD's performance has deteriorated over time, so it is not possible to argue that these are early issues to overcome: it is, after all, nearly 10 years since the G20 gave the organisation the country by country reporting mandate.

The OECD's failure to ensure reliable, timely publication of aggregate country by country data is a direct obstacle to accountability for curbing corporate tax abuse, of both national policymakers and of the OECD itself. It is also a major hurdle for lower-income countries, excluded from the OECD's information exchange arrangements, to take targeted steps against the tax abuse from which they suffer disproportionately.

We recognise that as the relatively new Secretary-General you have much else on your plate. The 'BEPS 2.0' process which was originally intended to deliver agreement by 2020 continues without conclusion, amidst widespread discontent among lower-income countries with the failure to include them in the decision-making process, and the apparent loss of support even from major OECD members like the US.

In addition, we note the call of the Financial Transparency Coalition (of which Tax Justice Network is a member organisation) for an urgent, independent ethics investigation of the relationship between the OECD (and the Centre for Tax Policy and Administration in particular) and the private sector, given recent concerns over the absence of 'revolving door' safeguards.[10] We further note the exchange of letters between the director of the OECD Centre for Tax Policy and Administration, and the group of UN Independent Experts and Special Rapporteurs who raised serious questions over whether the OECD's work on tax may risk violating human rights around the world.[11]

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[9] FACTI Panel, 2021, *Financial Integrity for Sustainable Development*, UN: New York, https://factipanel.org/docpdfs/FACTI_Panel_Report.pdf.
[10] Financial Transparency Coalition, 14 October 2022, https://financialtransparency.org/ftc-denounces-oecds-relationship-private-sector-lobbyists-calls-urgent-ethics-review/.
[11] Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social

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But these difficulties cannot be a reason for the OECD not to meet its mandate to provide an important global public good. Quite the opposite – it is all the more important, in the absence of progress in rule-setting, that policymakers and the public have timely, accurate data on the scale and nature of ongoing tax abuse.

It seems imperative to understand your, and the OECD's perspective, and any plans to redress these failures – including whether the organisation would support the creation of a UN Centre for Monitoring Taxing Rights to take responsibility for this global public good.

In the interests of transparency and accountability, this letter and any response may be made public.

Yours sincerely,

Alex Cobham

Chief executive
Tax Justice Network

and cultural rights; the Special Rapporteur on the right to development; the Independent Expert on the promotion of a democratic and equitable international order and the Special Rapporteur on extreme poverty and human rights, 30 March 2022, *Letter to Pascal Saint-Amans*, AL OTH 21/2022; and Pascal Saint-Amans, 27 April 2022, *Letter to Prof Waris, Mr Alfaragi, Mr Sewanyana and Mr De Schutter*, PSA/DO(2022)44; both available via https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

Appendix 3 - OECD Secretary-General response to Tax Justice Network

21 October 2022

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES

Secretary-General
Secrétaire général

Mr. Alex Cobham
Chief Executive
Tax Justice Network

MC/2022.245.cb

21 October 2022

Dear Mr. Cobham,

Thank you for your letter of 14 October, concerning aspects of country-by-country (CbC) reporting under Action 13 of the Base Erosion and Profit Shifting (BEPS) Action Plan, and in particular the content of a CbC report under Action 13, the current review of the minimum standard and the release of aggregated CbC reporting data. Please find below an update on the status of these important pieces of work.

<u>The content of a CbC report and the review of Action 13</u>

As you know, a CbC report prepared under Action 13 provides a tax administration with information to undertake a high level risk assessment of transfer pricing and BEPS-related risks posed by a multinational group to its jurisdiction. The information to be provided in a CbC report was agreed by jurisdictions participating in the BEPS project by consensus, following extensive discussions and consultation. Since 2016, a number of pieces of guidance have been agreed by the Inclusive Framework to assist groups and tax administrations in better understanding the requirements of the minimum standard, to improve consistency in the quality of CbC reporting data provided and to support its effective use by tax officials in risk assessment. Tax administrations have been further supported through the development of practical tools to assist in the analysis of CbC reporting data, a risk assessment handbook and risk assessment training.

An important aspect of ongoing work on Action 13 has been to identify areas where the data to be included in a CbC report can be improved. In some cases, issues have been able to be resolved through the publication of common errors in preparing a CbC report, or through the issuance of guidance, such as the clarification in 2019 that intragroup dividends should not be included in a jurisdiction's profit before tax. More substantive possible changes, including some of the suggestions in your letter, are being discussed by members of the Inclusive Framework as part of its review of the minimum standard and we are grateful to Tax Justice Network for the input it provided to this process. As you correctly note, it was originally intended that this review would be completed by this point. However, as I understand members of the Secretariat working on CbC reporting have described to you previously, finalisation of the review has been delayed by ongoing work on the two pillar solution to address tax challenges from the digitalisation of the economy. This is to ensure that any implications of that work for CbC reporting can also be taken into account and avoid the risk of further changes to the standard, if needed, within a reasonably short period. The outcomes of the review of Action 13 are now expected to be completed and delivered in 2023.

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Release of aggregated CbC reporting data

Apart from the establishment of CbC reporting under Action 13, another significant achievement of the OECD/G20 BEPS project was the work carried out under Action 11, which focussed on the measurement and monitoring of BEPS. The BEPS Action 11 Report recommended that the OECD work with members of the Inclusive Framework on BEPS (IF) to "publish on a regular basis a new Corporate Tax Statistics publication, which would compile a range of data and statistical analyses of BEPS in an internationally consistent format", including anonymised and aggregated CbC report data collected and prepared by governments.

Since the release of the BEPS Action 11 Report, the OECD secretariat has worked closely with members of the IF to improve the quality of data available to inform governments, researchers and the broader public on the scale of BEPS and the impact of measures implemented to address BEPS. As a result of these efforts, the first edition of Corporate Tax Statistics (CTS), which included a range of new and expanded corporate tax related-data sources, was published in 2019. The first edition of CTS did not include CbC report statistics, which were not available to the OECD at that time. In 2020, the OECD published the first year of CbC report data as part of the second edition of CTS and, in 2021, published the second year of CbC report data as part of the third edition of CTS.

In your letter you expressed concerns about the prospect of the third year of CbC report data not being published until 2023. Let me reassure you that the next instalment of CbC report data - the third year of CbC report data - will be published in 2022 as part of the fourth edition of CTS. In addition, this year's CbC report data will include a significant improvement in coverage. The 2022 release of CbC report data will contain data from 47 jurisdictions, which includes data from 98% of the jurisdictions that received a sufficient number of CbC reports to provide statistics and will include anonymised and aggregated data from 6763 individual CbC reports. This represents an improvement from earlier years, where the first year of CbC report data contained data from 26 jurisdictions (accounting for 77% of the jurisdictions that received a sufficient number of CbC reports to provide statistics at the time) and included data from 3936 CbC reports. The second year of CbC report data contained data from 38 jurisdictions (accounting for 95% of the jurisdictions that received sufficient CbC reports to provide statistics at the time) and included data from 5992 CbC reports.

While some larger jurisdictions are able to provide CbC report data more easily, this is not the case for all jurisdictions. The OECD works with IF member jurisdictions, especially those preparing the statistics for the first time, to help them to understand the statistics, to carry out appropriate data cleaning, and to ensure data quality. This is particularly challenging for many smaller jurisdictions facing capacity constraints, who in some cases have committed relatively significant levels of resources in order to provide their data and participate in this project as part of their commitment to improving the tax transparency of MNEs.

In the coming years, the OECD will continue to expand the coverage and timeliness of CbC report data. In August this year, the IF agreed that next year's release of CTS would simultaneously include two years of CbC report data to improve the timeliness of the data and at the same time new agreed reporting guidance allows jurisdictions to provide additional detail on the breakdown of MNE activity by the effective tax rates of MNE subsidiaries where possible under their confidentiality standards. Ongoing work is proceeding to also improve the granularity of the data, while respecting national confidentiality standards. These improvements will further enhance the quality of the anonymised and aggregated CbC report data published and greatly improve the available data to support future research, including by Tax Justice Network.

Kind regards,

Mathias Cormann

Appendix 4 - Open letter to G20 leaders

15 November 2022

TAX JUSTICE NETWORK

Tax Justice Network Ltd
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5th Floor Mariner House,
62 Prince Street,
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Company No 05327824

Date:
15 November 2022

To:
G20 Heads of state and government

Dear G20 leaders,

Open letter:
OECD failure to deliver on G20 mandates

Recognising the G20's focus on international tax issues, and the leadership of the organisation's new president, India in strengthening work on tax matters at the United Nations, I am writing from the Tax Justice Network to raise serious concerns over the OECD's problematic stewardship of international tax rules and of a global public good mandated to it by the G20 in 2013: the country by country reporting data of multinational companies.

These concerns, set out below, relate to the failure to ensure the technical robustness of the OECD standard; the failure to make aggregate data public in either a timely or a regular fashion, as directed by the G20; the failure to deliver company-level public data, which it is estimated would cut the revenue losses due to corporate tax abuse by more than **US$89 billion**; and ultimately, the OECD's failure to ensure that the organisation itself can be held accountable for progress.

The Tax Justice Network believes that our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to the needs of everyone. Under pressure from corporate giants and the super-rich, our governments have programmed these systems to prioritise the wealthiest over everybody else, wiring financial secrecy and tax havens into the core of our global economy. This fuels inequality, fosters corruption and undermines democracy. We work to repair these injustices by inspiring and equipping people and governments to reprogramme their tax and financial systems.

<u>Global tax losses and a critical accountability measure</u>

The G20 took an important step by directing the OECD (the Organisation for Economic Cooperation and Development) in 2013 to develop a standard for country by country reporting. This measure, which the OECD had long resisted, has the aim of exposing and reducing the misalignment between where

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multinational corporations declare their profits and the location of their real economic activity.

This practice, commonly referred to as profit shifting and which country by country reporting was specifically designed to expose, was estimated at the time to cost countries billions in lost tax revenue. These estimates proved to be correct when the OECD finally published two sets of country by country reporting data seven years later in 2020 and in 2021, allowing the most precise evaluation so far.

The Tax Justice Network analysed this data in the State of Tax Justice reports, published jointly in 2020 and 2021 with the Global Alliance for Tax Justice and Public Services International, to reveal that multinational corporations shifting profits offshore cost countries around the world over US$300 billion in annual tax losses, generating in excess of a trillion dollars of illicit financial flows each year.[1]

These revenue losses undermine governments and public services around the world. It is estimated that each year 17 million more people could benefit from clean water and 34 million from basic sanitation, if revenue losses due to global tax abuse (corporate and individual) were reversed. Over a ten-year period, these gains would be associated with the prevention of 600,000 child deaths and 73,000 maternal deaths.[2]

Consistent annual data supports the ongoing pressure to reform the international rules in order to curb the costs of corporate tax abuse, and assists tax authorities in targeting the most egregious cases. But the OECD has failed to meet this important mandate in multiple ways.

The OECD's multiple failures

This year, as people and governments everywhere feel the squeeze of a global cost of living crisis, the OECD has failed to publish country by country reporting in a timely manner. Without the transparency data, neither the Tax Justice Network nor any other independent research can evaluate how much each government is losing to multinationals' corporate tax abuse, or any progress made to curb tax losses in recent years.

The OECD's failure to publish this transparency data in a timely manner as directed by the G20 is unacceptable and made more problematic by the heightened urgency for revenue governments face today. In the nine years since the OECD was directed by the

[1] GATJ, PSI & TJN, 2021, *State of Tax Justice 2021*, London: Tax Justice Network, https://taxjustice.net/reports/the-state-of-tax-justice-2021/.
[2] TJN, 2021, *Tax Justice and Human Rights: The 4 Rs and the realisation of rights*, London: Tax Justice Network, https://taxjustice.net/reports/tax-justice-human-rights-the-4-rs-and-the-realisation-of-rights/.

G20 to collect and report country by country reporting data, the OECD has to date published only *two* years of data – the most recent of which relates to 2017.

This failure presents an important obstacle for the accountability of governments, including the G20, and of multinational companies – but it is absolutely fatal for the OECD's own accountability.

First, the lack of data makes it impossible to assess on a consistent basis whether there has been any progress at all on the Base Erosion and Profit Shifting (BEPS) initiative that is about to enter its tenth year. The single goal given by the G20 when they set BEPS in motion in 2012-13, is that the OECD should reduce the misalignment between the location of multinationals' real economic activity, and where they declare their profits.

With its unique control of country by country reporting data, only the OECD is fully able to assess this. The OECD is thus marking its own homework, and also preventing anyone else from doing so. But the existing analysis using alternative data sources shows that far from curbing corporate tax abuse, BEPS has actually allowed it to grow more sharply.[3]

Second, the OECD's failure to ensure timely publication of the data has meant that countries are unable to assess the revenue implications of the organisation's proposals for international tax reforms, which again are the result of a G20 mandate. For countries outside the OECD, the lack of data is especially stark. These countries in the 'Inclusive Framework' are being asked, in effect, to sign a blank cheque: to give up known taxing rights in exchange for entirely uncertain returns under the OECD proposals. Despite its unique data access, the OECD has refused to publish country-level revenue assessments at any stage – although is perhaps unsurprising as all independent evaluations indicate that lower-income countries stand to benefit least from the proposals.[4]

But failure to publish in a timely and regular fashion is not the only manner in which the OECD has mishandled the country by country reporting mandate. The third failure is the failure to

[3] Wier, L. & Zucman, G. (2022), 'Global profit shifting, 1975–2019', *WIDER Working Paper* 2022/121, Helsinki: UNU-WIDER: https://www.wider.unu.edu/publication/global-profit-shifting-1975%E2%80%932019.

[4] This includes the work of researchers at e.g. the intergovernmental South Centre and of the International Monetary Fund. See Ovonji-Odida, I., Grondona, V. & Chowdhary, A., 2022, 'Two Pillar Solution for Taxing the Digitalized Economy: Policy Implications and Guidance for the Global South', *South Centre Research Paper* 161: https://www.southcentre.int/research-paper-161-26-july-2022/; and Dabla-Norris, E., et al., 2021, 'Digitalization and Taxation in Asia', *IMF Departmental Paper* 2021/017, https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2021/09/13/Digitalization-and-Taxation-in-Asia-460120.

develop and upgrade a robust, technical standard to ensure high-quality data. The Tax Justice Network warmly welcomed the OECD standard for country by country reporting in 2015, which follows closely the original draft accounting standard that we had promoted since 2003.[5] We noted, however, significant issues in the technical robustness of the standard and the severely limited availability of the data.

Most significantly was a concession engineered by the OECD into the standard that permitted multinational corporations to disclose their country by country reporting privately to tax authorities, instead of disclose them publicly as originally proposed by proponents of the transparency measure. Under the OECD standard, tax authorities are required to anonymise the reports before sharing them with the OECD, which then aggregates and publishes the data. The anonymity conceded to multinational corporations, we argued at the time, negated the purpose and undermined the effectiveness of county by country reporting.

The OECD had committed to a review of its standard after five years of the BEPS Action Plan, and accordingly held a public consultation in 2020. The response was overwhelming, with investors and asset managers representing trillions of dollars of shareholding aligning calling for the data to be made public, and for the OECD to converge to the leading standard, that of the Global Reporting Initiative.[6] Two and a half years later, the OECD has neither concluded its review nor responded to these clear demands from stakeholders.

Costs of failure

Experience with more limited standards for public country by country reporting, including for financial institutions operating in the European Union, have provided a basis of evidence on the benefits of transparency. Banks with operations in jurisdictions identified as tax havens were seen to increase their tax payment by 3.6 percentage points once public reporting was required, compared to banks not making use of tax havens.

It is also estimated that even private preparation of country by country reporting data can increase tax paid by 1.5 percentage points, so we can discount the returns on publishing OECD reporting accordingly, which implies a 2.1 percentage point increase in tax paid. This level of response would imply a minimum return of **US$89 billion** through the reduction of corporate tax abuse, simply from requiring the publication of OECD reporting data. This reduction amounts to 28.5 per cent of

[5] For a more detailed discussion of the history and development of this important tool, see Cobham, Janský and Meinzer, 2018, 'A half century of resistance to corporate disclosure', *Transnational Corporations* 25(3), https://unctad.org/system/files/official-document/diaeia2018d5a2_en.pdf.
[6] See summary of submissions at 'Investors demand OECD tax transparency', 2020, Tax Justice Network blog, https://www.taxjustice.net/2020/03/19/investors-demand-oecd-tax-transparency/.

the £312 billion in tax that countries around the world lost to cross-border corporate tax abuse in a single year, according to our analysis of the OECD's aggregate data for 2017.

In other words, requiring country by country reporting to be disclosed publicly instead of privately makes the measure more than twice as impactful, and can prevent 1 of every 4 tax dollars lost to cross-border corporate tax abuse.

By engineering the anonymity concession into its standard, the OECD has failed governments around the world and cost them billions in revenue each year.

The Tax Justice Network, and many others, have repeatedly raised these issues over the years, most recently in an open letter sent in October 2022 to the newly appointed OECD Secretary-General Mathias Cormann from the Tax Justice Network detailing the failures in full. In his response, Mr. Cormann did not provide adequate reassurances that these issues will be resolved. While we welcome the OECD's commitment to reduce partially the lag on their publication of aggregate data, this does not address the wider issues of the quality of the data or of the fairness of access, and we urge the G20 to revisit the OECD's mandate.

The OECD has been left behind...

OECD staff working on country by country reporting have shown a valuable commitment to ensuring that member countries cooperate and that country by country reporting data are made available. It is clear, however, that the organisation has been unable or unwilling to provide the necessary resources to ensure that this role can be performed effectively.

As a result, the OECD is being left behind – by individual countries like the US and Spain maintaining regular and much more timely publication of aggregate data; by the EU deciding to require the direct publication of significant company-level data; by Australia now requiring multinationals' to publicly disclose their full country by country reporting; and by the growing, voluntary adoption of the much more technically robust GRI standard.

In 2021, the UN High-Level Panel on International Financial Accountability, Transparency and Integrity (FACTI) called for the creation of a Centre for Monitoring Taxing Rights "to collect and disseminate national aggregate and detailed data about taxation and tax cooperation on a global basis", reflecting that "[a] body with universal membership is needed to make detailed data available for analysis and research" and that "[t]he bare minimum to begin addressing the massive scale of tax avoidance and evasion is to obtain consistent annual data on a global basis."[7]

[7] FACTI Panel, 2021, *Financial Integrity for Sustainable Development*, UN: New York, https://factipanel.org/docpdfs/FACTI_Panel_Report.pdf.

It is, sadly, clear that the OECD is not meeting this "bare minimum". Moreover, the OECD's performance has deteriorated over time, missing its own deadlines for publishing country by country reporting and failing to do so at all so far in 2022. It is not possible to argue that these are early teething issues to overcome: it is, after all, nearly 10 years since the G20 gave the organisation the country by country reporting mandate.

...and the world is looking to the UN – the G20 must too

It is unsurprising then that countries of the world are already moving on to the UN. The G77 submitted last month a draft resolution at the UN General Assembly to upgrade the UN tax committee into an intergovernmental body with wider powers, while the Africa Group has proposed a resolution that would begin negotiations on a UN tax convention, as called for by the ECA finance ministers' declaration of May 2022.[8] The UN Secretary General António Guterres has announced his support for such negotiations,[9] and draft proposals demonstrate that a convention could require publication of country by country reporting worldwide and also bring about the FACTI panel's proposed Centre for Monitoring Taxing Rights.

We urge G20 leaders to back global calls for a new, inclusive UN role on taxing rights and to move the country by country reporting mandate to the UN, where the G20's 2013 demand for tax transparency can finally be realised in full.

The G20 was right to necessitate the creating of country by country reporting data, recognising the need and value of this global public good. The G20 is right, too, to remain highly concerned by the scale and damage due to corporate tax abuse. But even the most starry-eyed OECD member country must recognise that the organisation has failed to deliver both on the global public good of country by country reporting, and on providing a forum for tax rule-setting that is either inclusive or effective.

We now call on the G20 to bring this global public good into the daylight of democracy at the UN, by supporting the G77 and Africa Group resolutions; by asking the UN tax committee to take up responsibility for country by country reporting data and/or by backing the creation of the Centre for Monitoring Taxing Rights through a UN tax convention; and by supporting the creation of an truly inclusive, intergovernmental tax body under UN auspices.

Only then can we achieve the tax transparency and accountability that governments of the world urgently need to end the scourge

[8] https://taxjustice.net/press/g7-countries-cost-the-world-115-billion-in-lost-tax-african-finance-ministers-call-for-a-un-tax-convention/.
[9] https://taxjustice.net/press/un-secretary-general-signals-support-for-un-tax-convention/

of profit shifting and recover the hundreds of billions in tax revenue they lose every year.

Yours sincerely,

Alex Cobham

Chief executive
Tax Justice Network

Appendix 5 - 2023 Calendar of Events

December 2022

9 December 2022 - International Anti-Corruption Day

9-11 December 2022 - African Economic Conference, Mauritius

10 December 2022 - International Human Rights Day

12 December 2022 - International Universal Health Coverage Day

12–14 December 2022 - Effective Development Co-operation Summit, Geneva, Switzerland

January 2023

31 January - UN ECOSOC Partnership Forum, New York

February 2023

19-24 February - Financial Action Task Force, Plenary and Working Group Meetings, Paris, France

27 February – 2 March - Africa Regional Forum on Sustainable Development 2023, Niamey, Niger

March 2023

5-9 March - Fifth UN Conference on Least Developed Countries (LDC5), Doha, Qatar

6-17 March - UN Commission on the Status of Women (67th Session), New York, USA

13-17 March - Intergovernmental Panel on Climate Change (58th Session), Bern, Switzerland

14-15 March - UN Development Cooperation Forum 2023, New York

14-16 March - Arab Regional Forum for Sustainable Development, Beirut, Lebanon

27-30 March - Committee of Experts on International Cooperation in Tax Matters (26th Session), New York

31 March - Special Meeting of the Council on International Cooperation in Tax Matters, New York

April

21-23 April - World Bank Group/International Monetary Fund Spring Meetings, Washington DC

24-28 April - Latin America and the Caribbean Regional Forum on Sustainable Development, Santiago, Chile

24-27 April - ECOSOC Forum on Financing for Development Follow-up, New York

24-27 April - UN World Data Forum 2023, Hangzhou, Zhejiang, China

May

19-21 May - G7 Summit, Hiroshima, Japan

June

20 June - ECOSOC Meeting on the Transition from Relief to Development 2023, Geneva, Switzerland

July

1-3 July - Intergovernmental Panel on Climate Change (59th Session), Nairobi, Kenya

10-20 July - UN High-level Political Forum on Sustainable Development, New York

17-20 July - ECOSOC High-level Segment 2023, New York

September

9-10 September - G20 Summit, New Delhi, India

12-30 September - UN General Assembly (78th Session), New York

20-21 September - UN SDG Summit 2023, New York

October

13-15 October - World Bank Group/International Monetary Fund Autumn Meetings, Marrakesh, Morocco

22-27 October - Financial Action Task Force, Plenary and Working Group Meetings Paris, France