

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

March 23, 2021

RE: Public Country-by-Country Reporting

Dear Secretary Yellen,

As the European Union moves forward on a proposal to make country-by-country (CbC) reporting publicly available, the undersigned trade associations ask that the United States maintain its longstanding position at the OECD that CbC reporting information, as with all other tax return information provided to tax authorities, remain confidential and not be made public. This is the current practice regarding information that companies provide to country tax authorities. We believe the EU should not move beyond the original intent of CbC reporting.

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

Enabling country tax authorities to make a high-level tax risk assessment with respect to multinational enterprises (MNEs) filing CbC reports is the OECD's objective of CbC reporting, all the while balancing confidentiality of taxpayer information and the significant incremental burden placed on them in providing the information. CbC reports provide taxing authorities with data on global income, profit, taxes paid, and economic activity among the tax jurisdictions in which the multinational corporation operates. MNEs must identify each entity within the group doing business in a particular tax jurisdiction and provide a description of the business activities that each entity conducts. The reports were designed specifically for high-level risk assessment by tax authorities while not subjecting companies to unduly burdensome compliance costs. CbC reporting is not designed to provide a global information return for each individual entity in every country in which a multinational group operates. The information is not suitable

for public consumption and, therefore, should not become a parallel public version as envisaged by the EU.

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

If CbC reporting information were to be made public there may be serious risk that the data would be presented without the relevant context necessary to fully comprehend the report. Under current U.S. practice, companies share the tax information with the relevant tax authorities on condition it be kept confidential and where it can be understood in context. Additionally, public release of information contained in CbC reports may lead to calls for the publication of the income tax returns themselves.

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

Respectfully submitted:

American Chemistry Council
American Petroleum Institute
Financial Executives International
Information Technology Industry Council
National Association of Manufacturers
National Foreign Trade Council
Semiconductor Industry Association
Software Finance and Tax Executives Council
U.S. Chamber of Commerce
United States Council for International Business