

COUNTRY BY COUNTRY TAX REPORTING: A CRITICAL ANALYSIS OF ENHANCED REGULATORY REQUIREMENTS FOR MULTINATIONAL CORPORATIONS

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Abstract

As part of the Organisation for Economic Co-operation and Development's Tax Base Erosion and Profit Shifting project, country by country reporting has been promoted as a mechanism to enhance transparency with respect to the operations and tax planning activities of large multinational corporations. Country by country reporting involves the disclosure by a company, either publically or in confidence to governments, of tax figures and, potentially, other financial data on a country-by-country basis for all jurisdictions in which it operates. In this article we adopt a cross-country comparative case study analysis, involving two jurisdictions which have implemented country by country reporting. This article provides a critical analysis of a series of semi-structured interviews conducted in Australia and New Zealand with key tax professionals, along with revenue officials, with the aim of ascertaining the views of the profession and their multinational corporate clients on the new country by country reporting requirements. The findings not only reinforced our prior expectations based on documentary analysis that the approaches of the two jurisdictions would differ but revealed significant differences in the level of involvement of tax practitioners in preparing for country by country reporting for corporations, and between large and mid-tier firms.

1. INTRODUCTION AND BACKGROUND

This article systematically analyses the informational requirements of the standardised tax reporting approach for country-by-country reporting (CbCR) under Action 13 of the OECD's Base Erosion and Profit Shifting (BEPS) project.¹ Specifically, Action 13 provides for enhanced tax reporting by multinational corporations through a three tiered standardised approach for multinational entities requiring a master file, a local file, and a Country by Country (CbC) report. Unless otherwise mandated, such reports will be confidential between relevant revenue authorities and not available to the public. The study specifically investigates

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¹ OECD, *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report* (OECD, 2015); available at: <http://www.oecd.org/ctp/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm>.

two distinct jurisdictions - Australia and New Zealand. In December 2015, Australia passed legislation implementing Action Item 13 for CbC Reporting making it one of the first countries globally to do so. New Zealand's (NZ's) Inland Revenue released an Issues Paper in February 2016 on automatic exchange of information, with respect to CbCR. It subsequently moved on from the data collection phase and determined that a law change was necessary. These increased transparency requirements will have a significant impact on multinational corporations operating in Australia and NZ. To date, these implications have not been examined in depth in relation to their practical impact and significance on advice provided to companies, and overall professional advisor and corporate readiness for the changes.

CbCR involves the disclosure by a company, either publically or in confidence to governments, of tax figures and, potentially, other financial data on a country-by-country basis for all jurisdictions in which it operates. A mechanism for exchanging information also needs to be in place before any information can be exchanged with another jurisdiction. Multinational corporations as taxpayers, and potentially professionals, are currently under prepared for this BEPS initiative. Chartered Accountants Australia and New Zealand has identified that new measures will place additional pressure on in-house tax teams to deliver compliance lodgements, additional resources will be required for internal tax compliance and enhanced technology will be needed. Benefits are also identified such as real-time information to the board, sharing of information in a timely manner, better decision-making and risk assessment and resource allocation.

This article discusses the effect of the enhanced tax reporting requirements on multinational corporations from the perspective of their tax advisers. In turn, the findings not only inform the academic community but also allow those findings to be disseminated to those in professional practice and their affected clients. These developments extend beyond taxation such that those multinational corporations that voluntarily disclose information will potentially put themselves at an advantage. CbCR is likely to impact business models and operating structures. If the outcome of CbCR leads to further tax payments, this may affect multinational corporations' revenue and shareholder returns. Businesses may need to invest additional skills and resources to manage projects to meet these requirements. This may in turn affect asset valuations for strategic transactions undertaken by multinational corporations. If the reports produced through CbCR should be made public, as is proposed by the European Commission and discussed below, then investor-relations and media personnel will need to be prepared. Specifically, the United Kingdom (UK) Government has enacted regulations to enable the HM Treasury to make CbCR public in the UK.² Thus, findings discussed in this article contribute directly to both the implementation of the CbCR measures and the 'education gap' that the researchers believe needs to be closed between current readiness and awareness of the requirements of this key BEPS initiative.

This article specifically addresses the important topic area of 'the pros and cons of enhanced tax transparency', including enhanced reporting and sharing of information between jurisdictions. Increased transparency requirements will have a significant impact on the legal and accounting professions and their clients. To date, these implications have not been examined in depth in relation to their practical impact and significance on advice provided to clients, and overall professional and client readiness for the changes. As such this article

² See The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016. The regulations came into force on 18 March 2016, and were made using powers conferred by section 136 of the Finance Act 2002(1) and section 122 of the Finance Act 2015(2). These regulations were amended in 2017 by the he Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2017.

specifically asks and answers the question: ‘What are the current ‘gaps’ and how best to prepare the profession to advise corporations of the responsibilities of the enhanced tax reporting requirements under the BEPS project?’

The remainder of this article is structured as follows. Section 2 reviews the prior expert commentary on CbCR, focussing on the domestic jurisdictions of Australia and NZ, as well as developments in other jurisdictions, especially the European Union. The methodology employed to answer the question addressed in this study is then outlined in section 3, which is followed by an analysis in section 4 of the findings and themes emerging from the semi-structured interviews of tax professionals involved with CbCR by their corporate clients. Section 5 sets out the conclusions and areas for future research.

2. THE DEVELOPMENT OF CBC REPORTING

This section provides an overview of CbCR, a summary of the relevant prior work with respect to the two key jurisdictions for this case study, namely Australia and NZ, and an analysis of the key issues and concerns surrounding CbCR. It provides the background and foundation for the interviews which were conducted with practitioners in the area.

2.1 OECD developments concerning CbCR – a brief review

The OECD, as the lead proponent of BEPS related reforms, is providing guidance and setting standards which member countries will be expected to follow. Included in the BEPS package of 15 Action items are four minimum standards which over 115 countries have currently agreed to implement through the inclusive Framework.³ In particular, included in those minimum standards is the OECD’s standardised approach⁴ which requires multinational corporations to articulate consistent transfer pricing positions and provide revenue authorities with useful information to assess transfer pricing and other BEPS risks. Transfer pricing is the price at which related parts of a multinational corporate transact with each other and is known to be an easy way for those corporations to shift profits from a high tax jurisdiction to a low tax jurisdiction. The new minimum standard is intended to enable revenue authorities to make determinations about where their audit resources can most effectively be deployed, and provide information to commence and target audit inquiries. The outputs from CbCR are to be disseminated through an automatic government-to-government exchange mechanism. It is vital that mechanisms are in place within revenue authorities to ensure that confidentiality is maintained and that the information is used appropriately. This is to be achieved through incorporating model legislation and model Competent Authority Agreements, which collectively will form the basis for government-to-government exchanges of the reports. Importantly, these standards do not propose mandated public disclosure similar to that proposed by the European Commission; disclosure will be limited to the relevant revenue authorities.

The OECD included CbCR as part of its Action 13 recommendation. Specifically, the OECD states⁵:

³ See <http://www.oecd.org/tax/beps/beps-about.htm>.

⁴ See <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>.

⁵ See: <http://www.oecd.org/tax/beps/country-by-country-reporting.htm> (emphasis added).

‘To facilitate the implementation of the CbC Reporting standard, the BEPS Action 13 report includes a CbC Reporting Implementation Package which consists of (i) *model legislation* which could be used by countries to require the ultimate parent entity of an multinational entity group to file the CbC Report in its jurisdiction of residence including backup filing requirements and (ii) *three model Competent Authority Agreements* that could be used to facilitate implementation of the exchange of CbC Reports, respectively based on the:

1. Multilateral Convention on Administrative Assistance in Tax Matters;
2. Bilateral tax conventions; and
3. Tax Information Exchange Agreements.’

In December 2016, the OECD released two documents to support the global implementation of CbCR under BEPS Action 13 as part of the Inclusive Framework on BEPS: first, the key details of jurisdictions’ domestic legal frameworks for CbCR;⁶ and second, additional interpretive guidance on the CbCR standard.⁷ These documents provide essential information that will give certainty to tax administrations and multinational corporate groups alike on implementation of CbCR. The details on jurisdictions’ legal frameworks for CbCR include the status of the legislation, first reporting periods, availability of surrogate filing and voluntary filing, and whether local filing can be required. Information will also be published on the Qualifying Competent Authority Agreements being put in place to facilitate the international exchange of CbC reports between tax administrations. The additional interpretative guidance relates to the case where a notification to the tax administration may be required to identify the reporting entity within a multinational corporate, as provided in Article 3 of the Model Legislation in the OECD’s Action 13 Report. Longhorn et al⁸ observe that since documentation gathered under CbCR will not be publicly available, a widening of the OECD’s CbCR objective and scope should be considered.

The OECD’s CbCR template requires multinational corporations to report annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax, and income taxes paid and accrued. It also requires them to report their total employment, capital, retained earnings, and tangible assets in each tax jurisdiction. Multinational corporations must also identify each entity within the group doing business in a particular tax jurisdiction and describe the business activities of each entity. From the perspective of tax authorities, they will be able to ascertain how multinational corporations allocate their income and tax payments to a specific country, and other countries as well. The OECD’s CbCR template will also serve as an essential tool for taxing authorities to identify and select companies to be audited.

⁶ See <http://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm>

⁷ See OECD, *OECD releases further BEPS guidance on Country-by-Country reporting and country-specific information on implementation* (5 December 2016); available at: <http://www.oecd.org/tax/beps/oecd-releases-further-beps-guidance-on-country-by-country-reporting-and-country-specific-information-on-implementation.htm>. <http://www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.htm>.

⁸ M. Longhorn, M. Rahim, and K. Sadiq, “Country-by-country reporting: An assessment of its objective and scope” (2016) 14(1) *eJournal of Tax Research* 4-33.

In February 2017, the OECD released the terms of reference and methodology for peer review of the Action 13 minimum standard for CbCR.⁹ The terms of reference for peer review are: the domestic legal and administrative framework; the exchange of information framework; and confidentiality and the appropriate use of CbC reports. In October 2017, the OECD announced activation of automatic exchange relationships under the Multilateral Competent Authority Agreement on the Exchange of CbC Reports.¹⁰ Over 1000 automatic exchange relationships have now been established among jurisdictions committed to exchanging CbCR as of mid-2018, with more jurisdictions expected to nominate partners.

Globally, the European Commission is taking a lead on CbCR. In particular, the European Commission is proposing to require large multinational corporations to disclose publicly the income tax they pay within the European Union, on a country by country basis.¹¹ In addition, multinational corporations will be asked to disclose how much tax they pay on the business they conduct outside the European Union. For those tax jurisdictions that do not abide by the European Commission's tax good governance standards (e.g. 'tax havens'), this information will need to be disclosed on a disaggregated basis. Johnston and Sadiq provide a history of CbCR along with current European Union developments in their study on CbCR in the context of enhanced corporate accountability.¹² As discussed above, the UK has also passed regulations allowing HM Treasury to make CbCR public.

2.2 Australia and New Zealand – a review

As part of a multinational package, the Australian Parliament has already taken steps to implement Action 13 within the Australian tax regime. The *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015* (the Act) provides that CbCR is effective from 1 January 2016. CbCR applies to Australian headquartered corporate groups with annual global revenue exceeding AU\$1 billion (the equivalent of €750 million), as well as to the local operations of foreign headquartered multinational corporations in Australia. Under the new law, the parent company will be required to file a CbCR with the home tax authority. A Local File and Master File will need to be filed with the Australian Tax Office. The Australian multinational package also introduces new financial reporting disclosure requirements, a new multinational anti avoidance law, and increased penalties on adjustments made by the Australian Tax Office in relation to anti-avoidance and transfer pricing.

The Australian Tax Office has developed a Law Companion Guideline¹³ that describes how it will apply the law as amended by Schedule 4 to the Act. This Schedule implements Australia's CbCR regime, which is represented by Subdivision 815-E of the *Income Tax Assessment Act 1997*. Paragraphs 1–39 of the Law Companion Guide are a public ruling. CbCR Exemption

⁹ See <http://www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf>.

¹⁰ See <http://www.oecd.org/tax/beps-action-13-oecd-releases-cbc-reporting-implementation-status-and-exchange-relationships-between-tax-administrations.htm>.

¹¹ European Commission, *Public Country-By-Country Reporting / Corporate tax transparency* (2016); available at: http://ec.europa.eu/finance/company-reporting/country-by-country-reporting/index_en.htm.

¹² Andrew Johnston and Kerrie Sadiq, "Beyond Country-by-Country Reporting: A Modest Proposal to Enhance Corporate Accountability" (2017) 27(2) *New Zealand Universities Law Review* 569-600.

¹³ ATO, *Law Companion Guideline: LCG 2015/3* (ATO, December 2015); available at: <https://www.ato.gov.au/law/view/document?DocID=COG/LCG20153/NAT/ATO/00001&PiT=99991231235958>.

Guidance provides an outline of the general principles and processes the Australian Tax Office will take in relation to exempting an entity from some or all of its CbCR obligations. The Australian Tax Office has also released a guide entitled ‘Country-by-Country reporting: Questions and Answers’¹⁴ which addresses some of the more frequently asked questions in relation to CbC reporting.

In NZ, from 2017, Inland Revenue has advised that NZ headquartered corporate groups with annual global revenue exceeding NZ\$1.2 billion (the equivalent of €750 million), will be required to produce CbC reports for all income years beginning on or after 1 January 2016.¹⁵ The documentation is expected to list the entities within the group and detail the main business activity of each. Inland Revenue initially anticipated that the new CbCR requirements will affect 20-30 NZ headquartered corporate groups, although this number now appears to be around 19-20. It will contact each group directly to ensure they are adequately prepared for the new CbCR requirements. Inland Revenue has also prepared a spreadsheet which all NZ headquartered multinational corporations subject to CbCR need to complete.¹⁶ However, a significant number of NZ subsidiaries will also be impacted to the extent that their offshore parent companies are required to prepare CbCR in their home jurisdictions.

Specific legislative provision for CbCR was initially determined unnecessary in NZ as Inland Revenue was of the view that it has sufficient enforcement powers in ss 17 and 35 of the *Tax Administration Act* 1994 (TAA). Nevertheless, Inland Revenue indicated that it may seek to codify CbCR requirements into legislation to signal NZ’s commitment to CbCR. The master file and local file will not need to be provided to Inland Revenue as this may impose undue compliance costs but will need to be provided on request or during an audit.¹⁷ Inland Revenue has introduced an annual questionnaire designed to collect information about debt financing and transfer pricing issues from certain international companies operating in NZ. This information, once collected, will be used to assist with risk analysis and BEPS-related policy developments. In the *Taxation (Neutralising Base Erosion and Profit Shifting) Bill* 2017, a new section 78G was proposed to be included in the *Tax Administration Act* 1994 (TAA), along with a new section 139AB TAA 1994 that imposes a penalty for failing to provide the report required under s 78G. This new provision is intended to be backdated to apply from income years commencing on or after 1 January 2016. This Bill was enacted as the *Taxation (Neutralising Base Erosion and Profit Shifting) Act* 2018 on 27 June 2018, with effect for most provisions on 1 July 2018.

2.3 Concerns around CbCR – Key Themes and Issues

A review of current writing on CbCR reveals a number of common issues or themes which are briefly outlined in this subsection. Prior writing was initially dominated by comments from

¹⁴ ATO, *Country-by-Country reporting: Questions and Answers*, (last modified: 29 May 2017) available at: <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Transfer-pricing/Country-by-Country-reporting/Country-by-Country-reporting--Questions-and-Answers/>

¹⁵ See <http://www.ird.govt.nz/international/business/international-obligations/country-by-country-reporting/new-country-by-country-reporting-requirements.html>. There is no draft legislation provided as at the timing of writing.

¹⁶ See further for the CbCR Inland Revenue spreadsheet: <http://www.ird.govt.nz/resources/9/f/9f96d3a8-1c8b-49e4-852f-3ec3bcbc8a31/cbc-report.pdf>.

¹⁷ S. Joyce and J. Collins, *BEPS – Transfer pricing and permanent establishment avoidance: a government discussion document* (NZ Government, March 2017) at 34.

professional firms and other commentators, with a number of contributions from academics emerging more recently.

Ahead of the implementation of CbCR, multinational corporations were encouraged to review their existing systems, practices and information; and to undertake a 'dry run' prior to their first reporting obligations. Key steps and consequences were stressed to taxpayers and practitioners. Key steps include: creating awareness within the organisation of CbCR requirements; undertaking gap analysis, assessing exposures (including risks associated with legal structures and associated tax issues), developing justifications for practices, and restructuring (including realignment of systems) where mismatches exist. Identified risks will need to be managed, and potentially cross-border inconsistencies reduced as far as is practicable. The dry run may also reveal the need for additional resources and technology, and both greater consistency and retention of additional documents/records. As part of undertaking the dry run, mock reports could be created.

The consequences of CbCR include: increased scrutiny by revenue authorities; penalties for failing to lodge required returns on time; and further increases in the compliance cost burden for multinational corporations (including the necessity for additional resources, such as appropriately skilled personnel, and technology capable of collecting and forwarding required information). multinational corporations (and their advisors) need to consider challenging tax authority decisions where these appear to extend beyond. Multinational corporations, and their advisors, will need to monitor changes in relevant legislation and regulations, such as threshold requirements.

These issues became of greater importance as the first reporting deadline came closer. Concerns have been raised over maintaining confidentiality of information, especially as it is exchanged with other jurisdictions. To this end, the Mutual Competent Authority Agreement, Double Tax Agreements, and Tax Information Exchange Agreements provide a level of comfort with respect to maintaining confidentiality between signatory jurisdictions and within their competent authorities.

In relation to Australia, one issue identified as a potential concern are the unique Australian Local File requirements. The Local File must be completed by all Australian taxpayers that are part of a group of entities with global income of more than \$AU1 billion, with filings in respect of the year ending 31 December 2016, which is due by 31 December 2017. The format and content of the Australian CbC Local File are unique (and differs from the OECD's Local File design). Thus, taxpayers need to decide which software solution to utilise to produce a valid Local File that can be submitted to the ATO. Specifically, the Australian Local File collects entity and transactional information to assist with the ATO's risk assessment procedures and should be considered to be completely separate to transfer pricing documentation requirements.

These requirements will add additional compliance costs and obligations on Australian multinational corporations, including their reporting to the Australian Tax Office. Calls have been made for the Australian Tax Office (and Inland Revenue) to provide clear guidelines of what will be required for CbCR obligations, including interpretation of, and compliance with, legislative reporting requirements. The Australian Tax Office, and to a lesser extent, Inland Revenue, have been releasing additional guidance ahead of the first reporting period.

In addition to specific jurisdictional issues, variations in country reporting requirements have been identified, along with how this will need to be taken into account when multinational corporations complete the CbC reports. The issues can be categorised into operational, technical and reputational. Most of the analysis of CbCR to date has focussed on the first two areas, with much less on the reputational impact of CbCR. This latter category (reputational), could include issues around sharing the data contained in the report, what would happen if it was made public, and how would the template compare with others.¹⁸ It also includes such issues as the messages in the template and whether they align with group tax strategy and the value in leveraging this work to publish ‘Global Tax Footprint’ as part of your Corporate Social Responsibility report.¹⁹

In relation to overall preparedness, Thomson Reuters have conducted a survey as to the extent to which multinational corporations are ready for the implementation of CbCR. In the most recent 2016 survey, Thomson Reuters find that: 66 percent of companies are proactively preparing for the new BEPS reporting requirements, representing a 22 percent increase from the 2015 survey; 83 percent of respondents said documentation and CbCR for transfer pricing has required the biggest operational changes; 48 percent of companies surveyed have provided more resources to help their tax departments cooperate with BEPS implementation; and 86 percent of respondents said the BEPS Actions will cause their tax departments to dedicate more time to that area.²⁰

Thomson Reuters also state in another report²¹:

The majority of respondents from Europe (90%) and Latin America (93%) report the impact they are seeing as a result of BEPS reporting compliance is largely an *increase of time spent on the matter*. In addition, 33% of all countries report that *more staff is needed as a result of BEPS*. Interestingly though, many respondents stated that their companies *have not yet provided more resources to help their tax departments comply* with the demands of BEPS reporting.

Furthermore, the percentage of respondents that feel secure about their information technology systems’ ability to provide necessary support for compliance with BEPS Action Item 13 increased by a 27 percent from 2015 to 2016 (33 percent to 60 percent). All of these findings suggest many multinational corporations (and potentially their advisors) are not yet fully prepared for the commandment of CbCR.

¹⁸ See [http://www.ey.com/Publication/vwLUAssets/EY-CBCR-readiness-assessment/\\$FILE/EY-tax-news-2015-10-27-03.pdf](http://www.ey.com/Publication/vwLUAssets/EY-CBCR-readiness-assessment/$FILE/EY-tax-news-2015-10-27-03.pdf) (emphasis added).

¹⁹ See [http://www.ey.com/Publication/vwLUAssets/EY-CBCR-readiness-assessment/\\$FILE/EY-tax-news-2015-10-27-03.pdf](http://www.ey.com/Publication/vwLUAssets/EY-CBCR-readiness-assessment/$FILE/EY-tax-news-2015-10-27-03.pdf) (emphasis added).

²⁰ See further: Thompson Reuters, “2016 Global Readiness Survey Report” <https://tax.thomsonreuters.com/BEPS/survey-report-2016/?utm_campaign=TRTA-BEPS-Survey-2016&utm_medium=post-org&utm_source=lii-ea-ta-xx-xx-en&source=social>.

²¹ See: <https://tax.thomsonreuters.com/blog/understanding-beps-country-by-country-reporting-cbcr-and-why-technology-is-critical-for-compliance/> (emphasis added).

Recently Cobham et al²² reviewed the prospects for a global public database on the tax contributions and economic activities of multinational corporations. They present a set of user stories, questions, requirements, and scenarios of usage for a database. This is followed by examining what kind of information such a public database could and should contain. Next, they look at the opportunities and challenges of building a public database. Finally, they suggest next steps for key areas such as policy, advocacy, and technical work necessary in order to move towards a public database. With specific reference to CbCR, the authors' state²³:

As things stand, if CbCR data is not made publicly available the OECD initiative would perhaps be the least transparent transparency measure imaginable. And yet, it marks an important step forward for CbCR. With most major multinationals now actually facing the obligation to comply with the OECD requirement, the argument about transparency has turned. The question now is no longer 'Why should this information be collected?' Instead, it is now 'Why should this information, now collected, be kept secret?'

Given these suggestions around readiness, this study investigates whether tax practitioners hold the same views.

3. INVESTIGATING CbCR READINESS

To investigate the readiness of multinational corporations for CbCR requirements, a mixed methods qualitative approach was selected for this study. An overarching interdisciplinary socio-legal approach was adopted, supported by the findings from semi-structured interviews. The first part of the study involved the previously discussed analysis of the legal and policy concepts within both a social and historical context and was inductive in nature. This allowed the authors to determine the current state of CbCR globally, and specifically within Australia and within NZ. Research findings in this part of the study provided the underlying framework for the development of part two of the study which involved assessing the readiness of the profession and taxpayers to implement and comply with CbCR requirements.

The authors then undertook semi-structured interviews with key personnel in the 'Big 4' and second tier accounting firms, as well as revenue personnel in the Australian Tax Office and Inland Revenue. A total of 8 interviews have been conducted and transcribed. This comprises 6 from CA firms (4 in Australia and 2 in NZ) and 2 revenue officials (1 from NZ with 1 from Australia). While we initially planned on interviewing 1 or 2 key people from major law firms, our early interviews indicated this would be unlikely to provide any significant new perspectives. As such, we argue that tax practitioners from CA firms and law firms will have consistent views.

These interviews sought to ascertain the degree of readiness for CbCR (by professionals and their clients), the expected contribution of the revenue authority, the potential for support from relevant professional bodies, and the extent to which further education is necessary. As outlined above, questions for the interviews were generated from an analysis of prior publications. One

²² Alex Cobham, Jonathan Gray and Richard Murphy, "Why Do They Pay?: Towards a Public Database to Account for the Economic Activities and Tax Contributions of Multinational Corporations", *City Political Economy Research Centre, University of London, Working Paper 2017/01* (2017).

²³ See above n 22, at 3.

critical issue is the timing of the interviews, with data having to be gathered for income years commencing on or after 1 January 2016. Thus, for a number of multinational corporations, data will be exchanged in 2018 unless an exemption has been granted from the relevant revenue authorities. Consequently, the analysis of the key themes and challenges that CbCR gives rise to, along with recommendations for education of multinational corporations and their staff and advisers, is timely.

Human Ethics approval was sought and secured from the University of Canterbury where one of the researchers is based. This approval ensured that the process by which the authors would gather information from the interview subjects would adhere to best practice and ensure the confidentiality of participants' identity and their organisations. The researchers ensured that participants were comfortable with the purpose and scope of the interviews, and signed the consent form. Where the interviews agreed to the interview being audio recorded, they were assured by the researchers of the confidentiality agreement signed by the research assistant that provided transcription services.

The interviews, where feasible, were conducted in person by one or both of the researchers at the offices of the various participants located in Australia and NZ. Each interview took between 30 to 60 minutes. While a series of questions were developed, the researchers were keen to allow flexibility and variation so as to best ensure relevant information and insights were provided by the interview subjects. A total of 8 interviews were conducted over a period of approximately six months in 2017.

4. CORPORATE READINESS FOR CBCR

According to Thomson Reuters 'in practical terms, CbCR better ensures that adequate taxes are paid in the jurisdiction where profits are generated, value is added, and risk is taken. The ultimate goal, of course, is to promote transparency and accuracy in reporting.'²⁴ Given the obligations placed on tax professionals and clients to produce this information, it is essential that there is an understanding of the requirements of CBCR. However, a preliminary assessment suggests that, based on prior publications, tax professionals and their clients have some way to go before they will be ready for CbCR. Australia overall is (marginally) ahead of New Zealand, with the former intending to be a 'leader' and the latter a 'follower'.

4.1 Interviews with tax practitioners

In this part of the article, comments on the themes emerging from the interviews are provided. It is with a reasonable degree of certainty that it can be stated that professionals and their clients in Australasia will be 'challenged' to be ready in time for the commencement of CbCR, and moving forward, along with the global impact through clients having operations in numerous other jurisdictions. A steep learning curve is also expected for all during the first year or two in which CbCR is operative. This is particularly so for Australia where the scale of affected corporations is much larger and the challenges greater. The NZ situation differs as will be explained later in this section of the article. The following discussion largely relates to how CbCR is being rolled out in Australia unless otherwise indicated.

²⁴ See further: <https://tax.thomsonreuters.com/blog/understanding-beps-country-by-country-reporting-cbcr-and-why-technology-is-critical-for-compliance/> (emphasis added).

4.1.1 Australian tax practitioners

Interviews revealed that CbCR is not well understood by multinational corporate clients of major tax firms. Indeed, there have been misunderstanding over the scope of CbCR, with a lack of a full appreciation of the scale of how CbCR will affect the international dealings of multinational corporations. It is arguably the most significant addition to existing transfer pricing obligations faced by multinational corporations. For example:

So, we go to them explaining what it is. [I]t's surprising that so many clients don't even know about these things, and they are like: 'oh, we need to do this?', 'where is it going to be shared?' and all those questions start coming in. And they're like 'ok, this is something big.

Australian Practitioner 1

To assist with improving client understanding, education is seen as being critical, as well as raising awareness, especially of the specific Australia rules and approach to CbCR:

[I]n the last 12 months, it's been ... an education campaign around understanding what the Australian implementation of the OECD model would look like. [W]e primarily did that through client seminars. [W]e also produced what we call Tax Alerts, which we send out to our clients to tell them what the rules are, what the requirements are going to be. [W]e then do one-on-one meetings with particular clients, and we tell them what the rules are and how it's going to impact them, and from a technology perspective, because in Australia we are going to be lodging, these files electronically, which is very different from the rest of the world.

Australian Practitioner 2

This message has varied slightly depending upon whether it was an inbound or outbound corporate (Australian Practitioner 3). The process would commence as follows:

The first step was often to talk to the relevant person at the client, to try and bring it to their awareness, but also to bring it to head office's awareness that this was coming, and it might be coming to Australia a little bit earlier than it's going to hit the deck anywhere else in the world, because Australia is one of the first adopters.

Australian Practitioner 3

A number of clients have been unclear over expectations and requirements, and unlike earlier recommendations, did not undertake 'dry-runs':

I think it's a slow burn, they're aware, but everyone sees it as a future issue. ... but I can't say that they've really taken it seriously, and now they're actually having to start to think about that. ... And, so people, it's almost until it's really almost crunch time, they haven't taken it as seriously as perhaps they should.

Australian Practitioner 4

Concern has been expressed over the speed of the implementation of CbCR in terms of clients being ready for it, although there was no surprise that Australia was at the forefront:

I wasn't particularly surprised that Australia was trying to be at the forefront, along with the UK and a few other jurisdictions, given the populist nature of the political landscape at the moment.

Australian Practitioner 3

Taking a big picture overview, a major concern expressed by Australian tax practitioners is the lack of consistency globally with respect to CbCR requirements:

The single biggest issue has got to be around inconsistency, ... The broad framework is consistent, but the country-by-country application varies, and therefore you're not just having to build to a global template, you're having to build to a global template that has been modified to deal with unique requirements on a country-by-country basis, and that, I guess just creates a lot of confusion, it creates a lot of extra work at the headquarter level.

Australian Practitioner 4

Leadership was raised as a critical issue to ensure CbCR compliance works effectively, such as through a project manager:

[T]here are people being recruited just to ... handle these kind of projects. Because the clients might feel that the cost is too high maybe to get someone engaged, like a Big Four or whatever, so they would rather feel, like ok, so let's hire someone, one that manages everything with minimum kind of input from advisors or something. ... [I]t's really important to have a project manager or leadership role.

Australian Practitioner 1

Furthermore, CbCR is seen as increasing tax compliance costs for businesses and causing an information overload for tax authorities. It also raises concern for some high wealth individuals that are 'caught up' within CbCR. It raises numerous confidentiality issues and a concern that variation across jurisdictions in terms of local file content, does not facilitate a consistent story globally. Australia, for example, requires a number of extra reporting obligations for the local file. Other jurisdictions will have their specific requirements as well. Sharpening the focus of multinational corporations are the notification requirements that accompany local files, along with the penalties for noncompliance, and use of a tax firm. For example:

Because there is significant penalties in different countries for late lodgement, or failure to lodge, then that's really important. ... There is very few clients who can do this without some level of advisory, external advisory assistance.

Australian Practitioner 2

Views have been critical of the Australian Tax Office, with a hope that the Australian Tax Office will have patience as multinational corporations make changes to their systems:

I really would be looking for the Tax Office to have the patience in implementing the new system, that they have had when they have implemented systems in the past, and not assume, simply because they are dealing with so-called significant global entities, that there is sophisticated native reporting systems that allow this sort of information just to be created and lodged. So some patience from the regulator would be appreciated.

Australian Practitioner 3

A number of multinational corporate clients are also grappling with which countries they need to submit a CbC report to, and which have granted exemptions or have yet to sign up to CbCR. The United States was cited as one example where an exemption has been granted for (at least) a year given the United States has only recently committed to CbCR.²⁵ The issue of exemptions will be important for the first year or two, with only a local file needing to be filed with the Australian Tax Office:

So, the Tax Office have come out, saying that, where you don't have CbCR requirements in your parent jurisdiction, they will give you an exemption, at least for the first one to two years. So there will be quite a few clients who will apply for an exemption from the CbCR and the master file. They will not get an exemption from the local file though, here.

Australian Practitioner 2

Ensuring accurate automated and technological tools are in place to collect and report the information was also a major theme. This may require hiring of new specialist personnel. With respect to who takes the lead on CbCR, a related issue is whether this is really an accounting issue (which is where the origins of CbCR can be traced to in the early 2000s), a legal compliance issue, or a taxation issue. It would appear, based on the interviews, the International Tax division of a firm is taking the lead, which the authors of this article consider to be appropriate given the higher level of divergence in tax and accounting practices between jurisdictions compared to transfer pricing. For example:

Global Tax led the discussions ... and when this question came in, we actually proposed that we should involve our accounting team because it's very specific and if you need to rely on proper advice, we would recommend doing that. So we actually got them involved and it became a separate project just to kind of answer on that consolidation thing.

Australian Practitioner 1

Furthermore, having the necessary IT systems in place is vital as the sheer amount of data to be extracted would make a manual process unmanageable. It is also vital to develop tools to assist with extracting information and putting it in the format required. Overall this was perceived to be an onerous task for multinational corporations. Comments received from interviewees include:

The dream would be able to ... press a button, and hey presto, through your general ledger, and your systems, the CbCR template gets populated and the local file from an Aussie perspective gets populated.

Australian Practitioner 2

²⁵ A list of jurisdictions for which the USA has received documents to permit CbCR is available at: <https://www.irs.gov/businesses/country-by-country-reporting-jurisdiction-status-table>. Australia and NZ are included on this list. The US has commenced putting arrangements in place for CbCR with a number of jurisdictions; this includes Australia with effect from 1 August 2017.

While the above issues may appear to be largely negative in that they create onerous obligations (along with the associated compliance costs), CbCR creates an opportunity for multinational corporations to have a global and consistent transfer pricing policy and documentation. In this way some managerial efficiencies may be achieved. However, not all firms appear to be as advanced when it comes to technology; calls for automation along with outsourcing have been noted, although software providers have been challenged:

I think that eventually it will be technology solutions that are driving this, which means what companies are going to be spending ... millions and millions of dollars on, collectively, over the next couple of years, to be compliant.

Australian Practitioner 2

You ramp up your internal resources, you suddenly outsource it to a whole stack of advisors, and you're looking at third party software being yours to work out, you know, is there some automation around? So, a combination of those three is creating more cost for business at the end of the day. ...

Australian Practitioner 4

Furthermore, Australian Practitioner 4 also stated:

The way to think about it, is, you've never had, on a single report, the whole world mapped out, for a multinational, available to every revenue authority around the world. That is the key difference [of CbCR].

However, in turn, Australian Practitioner 4 went on to suggest that the:

... question on everyone's mind is what are the revenue authorities going to do with this and, and how sort of proactively are they going to look at it and ask questions? It will take time for revenue authorities to work through the data to get the 'full picture.'

CbCR will also create opportunities:

The current transfer pricing policy isn't working as intended because we're getting some weird results, or you're saying you know what? There's a bunch of value-added going on in these jurisdictions that we're not properly compensating and or can we restructure and put more people and more risk into a particular jurisdiction? Because at the end of the day with all of the other BEPS initiatives, there's a lot of tax planning that's ... no longer there. ... I think that having that granular, deep-dive look at your ... supply chain and your overall structure does give you that opportunity.

Australian Practitioner 4

Transfer pricing was recognised as critical to CbCR, including developing a consistent approach across a multinational corporate:

What's ... the [Transfer Pricing] policy there, how are they benchmarking it there, so now when we are kind of merging everything together. It has to [be] ... kind of sing the song, from the same kind of song, if you like. It has to be really consistent. ...

Australian Practitioner 1

Transparency is also a critical issue, through both mandatory disclosures for some multinational corporations headquartered in Europe, and also through voluntary disclosure in Australia (the value of such disclosures was questioned):

More of the clients are trying to use [CbCR] as a measure to talk to the public or show that ... we are doing the rightful thing. Because, lately multinational entities have been shown in the news and elsewhere as like, being targeted and being shown as a negative side. ...

Australian Practitioner 1

I have a bit of a joint dispute about what the tax transparency disclosures, whether the tax transparency disclosures really disclose anything anyway.

Australian Practitioner 3

Related to the critical issue of transparency is the public disclosure of information. Concern has been expressed over the way public information, such as that disclosed voluntarily by some Australian multinational corporations, will be manipulated to argue there is tax avoidance. The issue of whether jurisdictions should be sanctioned for misusing data was raised. However, public disclosure may prove to be positive in the longer run:

I think that the concern is that something gets released without commentary and people ... as in the public, are going to get the wrong perception of it because journalists will manipulate it, to sell a certain story, and you know, the story that is really popular and easy to sell at the moment, is multinational tax avoidance. ... [M]ost taxpayers are actually trying to be compliant, in a really complex area in tax law, which is transfer pricing, where there is not a lot of precedence in terms of, litigation. ...

I think the good bit is if it restores the public's faith in [the] tax affairs of multinationals, and eventually that will only come about through public disclosure. I think it does elevate tax to a new level within the organisation. I think it shines a light on geopolitics in a way that wasn't there before, and hopefully it will improve the mutual agreement process, because it has to.

Australian Practitioner 2

I have great faith in the Australian Tax Office and ... the seriousness of ... which it takes its confidentiality obligations, so at this end, I'm not terribly concerned.

Australian Practitioner 3

Going forward, it will be important that multinational corporations create an audit trail and ensure all documents are readily available to support what is contained in the CbC reports. The audit trail will need to remain accessible for many years given that information may be requested several years after the filing of the Local File. Decisions need to be made sooner rather than later with respect to the requisite technology and recording systems that multinational corporations uses. Currently multinational corporations should be undertaking 'dry runs' to assess their existing transfer pricing policies within the wider group, and where necessary, implementing necessary changes so as to be compliant. However, it would appear few have undertaken 'dry runs'.

Outside of a specific Australasian perspective, in the view of the practitioners, there is not a clear divide between developed and developing countries in terms of their readiness for CbCR. A more telling factor is the state of transfer pricing policy and documentation. India was given as an example of a developing country (also a member of BRICS) that has a mature transfer pricing system in place. In this regard:

[D]eveloped countries definitely are the kind of first movers who are really going into this and adopting it quickly, and developing ones as well are doing that, but there are a few who are still thinking about it, not sure what to do, waiting for others to see what's happening and all this, but I would really not differentiate between developed and developing. ...

Australian Practitioner 1

I think developing countries, it's a win for them, in terms of global transparency implementation. The problem for them, is how do they, how do they stick up for themselves in terms of getting their fair share of tax when much more advanced taxing authorities, like Australia, the US, the UK, and Japan, will do APAs [agreements].

Australian Practitioner 2

Key issues identified in the interviews with Australian practitioners include: data reliability (involving having robust IT systems in place), being ready early and prepared to restructure ahead of providing the information should this reveal significant risks, having a project manager supported by a competent team, particularly in the case of the larger and more complex multinational corporations.

4.1.2 New Zealand tax practitioners

With respect to NZ tax practitioners, the approach differs significantly to that of Australia. This is largely a result of how Inland Revenue has determined that CbCR will be rolled out in NZ (see further in subsection 4.2). New Zealand practitioners have been effectively 'shut out' of the formal CbCR process with Inland Revenue directly contacting the NZ headquartered multinational corporations affected by CbCR. While tax practitioners have been able to provide educational advice, they have been forced to act more reactively when clients contact them following receipt of a letter or other communication from Inland Revenue.

With respect to NZ-headquartered multinational corporations under CbCR, their tax agents are within the domain of the Big 4 firms, with mid-tier firm's involvement encompassing inbound involvement through some NZ subsidiaries. In this regard it has not been a major issue for mid-tier firms with few affected clients.

This direct approach to multinational corporate taxpayers is part of a concerning trend in the view of tax practitioners:

Some of our clients have been a little reluctant to engage with Inland Revenue directly on that. They have accepted the letters, or receipted the letters, and then they have contacted us for further comment and discussion with respect to what it all means. ...

I think given that so few taxpayers are affected by CbCR in New Zealand, I can see why Inland Revenue decided to engage directly. [D]o I think it's a good thing in terms of the administration of our tax system and companies looking to do things in the best interests of their shareholders and stakeholders, I'd probably say, I've got some concerns about the trend of Inland Revenue directly engaging with taxpayers. I mean, there's the whole reason that, you know, there's a role for tax consultants and [the] tax advisory community, and that.

NZ Practitioner 1

Little in the way of benefits is seen in CbCR, at least from the perspective of tax practitioners and their view of how their clients see CbCR. While CbCR may be helpful in illustrating where some multinational corporations may have abusive structures in place, which is helpful for revenue authorities, the additional reporting obligations provide no real benefits for multinational corporations, apart from being an opportunity to review their internal information systems across the group. Indeed, in many cases there may be nothing new for revenue authorities to find:

Just because we are having to provide CbCR information through to revenue authorities, I don't think they are going to find anything new. It's not going to reveal anything they didn't already know about the certain approaches [in] countries with respect to the taxation of multinationals.

NZ Practitioner 1

From a mid-tier firm perspective the CbCR process is largely a compliance activity, pushing out work to the taxpayer with little value added, at least in the early days of CbCR, as they do not necessarily get to see the big picture:

It's more reporting and compliance, isn't it? Which, I think a lot of them are going to see it as, where's the value-add? Where does it add value to their business?

NZ Practitioner 2

Rather, the preference would be to send Inland Revenue a set of accounts for them to analyse, as CbCR is just doubling up on information provision:

My immediate gut feel is that we are, we're just doubling up on the stuff that's already there, and, if we could just send over a set of accounts with the right disclosures, then that probably gives all the information anyway.

NZ Practitioner 2

Indeed, in NZ while ERP/SAP specialists have been utilised by some multinational corporations on the advice of their tax agent, which has led to significant compliance costs, the process of collecting data from ERP and other systems is expected to be largely manual to complete IR's spreadsheet:

Systems are already collecting what's needed. [I]t won't automatically report along the lines that's required by the CbCR, ... It's a little bit manual.

NZ Practitioner 1

While IT is expected to be a sizeable area for Big 4 firms to be involved, this does not appear to extend to mid-tier firms:

Well, it could do from an IS perspective I guess. But again, given where we are positioned as a firm, as we said, we're unlikely to have too many in that, that's going to be great if they all go over the threshold, perfect, but we're not going to be, we're not going to be the pioneers in that regard.

NZ Practitioner 2

A bigger issue than CbCR, at least from the perspective of mid-tier firms, is recognition of the underlying double taxation:

Actually, it's the smaller businesses that are affected, probably more so, by the double tax, because they haven't got the resources to play the clever games to get the nil tax.

NZ Practitioner 2

Concern has been expressed over the use of the information, not only where European multinational corporations may be required to reveal the CbCR information, but more importantly over the use of the reports by certain governments, at least from other areas where information sharing is undertaken. This concern is also broader to encompass commercially sensitive information becoming public:

[W]e know of some examples whereby some of our clients have had information provided to revenue authorities, which has then been provided to other revenue authorities and then gone to other parts of government.

NZ Practitioner 1

My initial reaction is that they wouldn't be that keen for stuff that's commercially sensitive, in particular, to get into the marketplace, because everybody's looking to see whether they can find out what the other party's doing and if this is going to leak more information that might be of relevance to how business is carried on, then that, that would be a concern, would be my initial reaction.

NZ Practitioner 2

In terms of key 'takeaways' from CbCR in NZ, among tax practitioners there is some surprise as to how straightforward the process has been with relatively little difficulty involved. Second, in an environment of increased transparency, what Inland Revenue could have requested from multinational corporations could have been much greater, especially if the approach of the Australian Tax Office had been followed, such as requiring schedule 25A filing requirements and encouragement for multinational corporations to make their reports public through the voluntary disclosure process. Third, there is concern that Inland Revenue is not respecting the tax agent's relationships with their clients:

I guess, it's a little disappointing that Inland Revenue are not respecting tax agents' relationships with clients. I would have thought that Inland Revenue really should be working in, at least in partnership with the tax agents around CbCR instead of going directly to these multinationals.

NZ Practitioner 1

I think the thing that is going through my head is, where does all this disclosure, and reporting, and whatnot, stop, because we're continually looking at the conspiracy theory I guess, and that's probably with some valid reason, because there'll be stuff going on. But, where's the line, and how far is this going to continue to creep?

NZ Practitioner 2

The process in NZ has been recognised as being more straightforward than in Australia, as noted by Australian Practitioner 3:

[I]t would have been hard for the revenue authorities to get their hand on anyway, and as you say, the New Zealand authorities reckon they can just demand them as part of the tax return, in any event. The Tax Office are possibly a little bit more hamstrung because of our administrative ... rules around what actually has to be provided under a Division 355 notice, but I don't think it would have been hard for the Tax Office to get the data, in any event.

4.2 Interviews with revenue authority personnel

From the perspective of revenue authority representatives, there is a distinct difference between the approaches taken in Australia and New Zealand. The approach of the Australian Tax Office, as already noted by the Australian tax professionals interviewed, is to engage directly with each affected multinational corporate's tax agent. A number of tax practitioners have been actively involved in the Australian Tax Office external consultation group, which includes representatives from the Big Four and from some of the software developers. A key issue is to ensure that the XML-enabled software is ready and is used for filing the CbC reports electronically. The Australian Tax Office has had to clarify some definitional issues with the OECD. One particular benefit for the Australian Tax Office is greater insights into whether something should be included or not: "So that's one way we've been able to help out – provide clarity."

Overall this should facilitate a more accurate risk analysis by the Australian Tax Office of multinational corporate operations from a tax compliance perspective. In terms of looking at the Action 13 report, an ATO official stated in an interview that:

[I]t's really mandatory in terms of the CbC report and its focus is really on the CbC report, and less so on the master file and the local file. ... [B]ecause the OECD hasn't been as specific with the other two reports, that's where you are going to see that inconsistency and that could potentially, maybe create some frustrations.

The Australian Tax Office emphasised the law companion guide it created and how this should be used as guidance for preparation of the specific reports. This information has been put on the website, including responses to issues raised by the consultation group, and consultation with other industry bodies. Importantly, the Australian Tax Office reemphasised that in Australia the CbC report will not be made publically available. However, should the Australian Tax Office be aware that the report would be made available in some other jurisdiction, they 'would have to consider suspending exchanges with that country'. When asked whether the Australian Tax Office could see any benefits to multinational corporations from having the information publicly available the response from the ATO interviewee was:

[I]t's not something that we've had a chance to discuss, or have discussed, with the corporates, or internally.

Exchanges would be limited to particular jurisdictions via the Common Transmission System, which the ATO interviewee advised is a manner by which the information can be exchanged consistently and confidentially:

[W]e would only exchange the CbC report with jurisdictions where we have either the [exchange agreement] in place, or otherwise a bilateral agreement in place.

In NZ, the approach of Inland Revenue is to have oversight of the entire process through direct liaison with affected multinational corporations. The first reporting of CbCR data took place during the 2017 calendar year. Inland Revenue has provided a data form (IR1032) spreadsheet that requires aggregate information to be collected for 2016 and subsequent years for each jurisdiction in which impacted groups operate:²⁶ gross revenues (broken down into related party and unrelated party categories); profit (loss) before income tax; income tax paid (on cash basis); income tax accrued (current year); stated capital; accumulated earnings; number of employees; and tangible assets other than cash and cash equivalents.

In addition, impacted groups will need to list all their corporations resident in each jurisdiction, noting also the main business activity of each entity. Inland Revenue intends to contact the 19 NZ headquartered corporate groups that are required to file CbC reports and provide them with the required templates and guidance notes (including both general and specific instructions) published by the OECD. It has maintained regular contact with these NZ-headquartered multinational corporations to see where they are at in terms of being ready and meeting their CbCR requirements.

Inland Revenue determined that it would approach the 19 NZ-headquartered multinational corporations directly, rather than through their agents (something which noted earlier has not been well received by the tax agents), with a number of multinational corporations appear to support. Consequently, Inland Revenue has largely left it to the taxpayer to contact their agent. This is somewhat of a trend when it comes to international cross-border activity involving multinational corporations, such as with the annual questionnaire provided to multinational corporations regarding their cross border activities.

With such a small number of NZ-headquartered multinational corporations involved in CbCR Inland Revenue has been able to undertake extensive risk analysis of this group, with a focus on involvement in jurisdictions such as Hong Kong, Ireland, Luxembourg, the Netherlands and Singapore. The location of intellectual property (including potential abuse) is seen as a major issue. In the interview with a senior Inland Revenue official, a number of key observations were made from Inland Revenue's take on CbCR.

We've left it for the taxpayer to talk to their agent, simply because they're large corporates and generally speaking, they all have a tax manager, so in that regard, it's been our approach to actually deal directly with the tax manager, as opposed to going through an intermediary.

Inland Revenue appears willing to largely rely upon other jurisdictions that will require local files and master files, especially for inbound NZ subsidiaries. From sharing the information

²⁶ A copy of IR's template is set out in Appendix 3.

this is expected to assist Inland Revenue to assess whether there are any reasons to examine further the operations of any particular multinational corporate. Where the greatest impact of CbCR is seen from Inland Revenue's perspective is for technology companies:

[W]hat are a lot of these initiatives about? They're about changing corporate culture in terms of aggressive tax planning, that with CbC reporting, a corporate, a tech company, for example, that has loaded its IP into a tax haven, and has over-sized profits in that haven compared with the rest of their supply chain, is just going to stand out, ...

In terms of the confidentiality of exchanging information, Inland Revenue is of the view that:

... the base for us in terms of, getting the comfort that we can exchange and the ... data safeguards will be there, is actually [the] Global Forum peer reviews that have been done and are still being done, for automatic exchange.

Going forward, there is no intention from Inland Revenue to introduce new voluntary disclosure requirements (or for that matter mandatory disclosure) on top of the current statutory voluntary disclosure regime available to all taxpayers, for CbCR or for automatic exchange of information. The most important document for CbCR for Inland Revenue will be the IR1032 spreadsheet. Inland Revenue appears to be taking a pragmatic approach, with multinational corporate taxpayers encouraged to be upfront:

[P]ut your best foot forward and, and explain your system, how you allocate profits, why there've been losses, you know, there can well be good reasons. It's just not abusive transfer pricing that produces losses, you know, 25 per cent of the stock exchange make regular losses, you know, that's just a fact of life of commercial activity, and you will have losses inevitably, you will have poor performance, explain that as opposed to, you know, waiting for an audit to be opened up.

Indeed, within the context of reporting, we are seeing behavioural changes, for example corporates considering the use of hybrids are told, '... our advice with hybrids, for example, is the reverse of the Nike swoosh, just don't do it.' IR's three takeaway points were expressed as:

So, firstly, it's not onerous, the CbC reporting. Secondly, it's good heads up information, but not more than that, it's high level risk assessment and, and nothing more. And, thirdly, it's an opportunity for corporates to either wake up and restructure and, sort out the mismatches and oversized profits in the wrong places, and at the same time, actually put together good information, good explanation, [and] good context, in terms of how they operate and why they operate in that way and, and how the results shape up.

In relation to the Australian approach compared to that of NZ, Inland Revenue commented:

I've said it to them anyway, is I wonder just how they'll cope with that information, because you can actually have information overload as well.

Since the interview was conducted with Inland Revenue, the Taxation (Neutralising Base Erosion and Profit Shifting) Bill 2017 was tabled proposing a statutory report be required, with a penalty to be imposed for failing to meet the obligation. Given this timing, we were not able to include this in the interview discussion.

Overall, it would appear that the approach of the Australian and NZ revenue authorities are at opposite ends of the spectrum, a position governed in part by the regulatory environment in

each jurisdictions, but also recognising the relative difference in size of their economies, the use of Australia as a regional hub, and the small number of NZ-headquartered multinational corporations under CbCR. It would be fair also to add that Inland Revenue is taking a much more ‘relaxed’ approach in the belief that it has a close handle on affected multinational corporations in NZ through its risk analysis, and that it can rely upon other jurisdictions to exchange information on foreign-headquartered multinational corporations that operate in NZ, many of which will be in Australia.

5. CONCLUSIONS, LIMITATIONS AND FUTURE RESEARCH

This project was designed to assess the current ‘gaps’ and how best to prepare the tax profession for enhanced tax reporting requirements under the BEPS Project. The findings from the interviews conducted suggest that the answer to this research question is different depending upon jurisdiction and size of professional firm.

The Australian and New Zealand tax practitioner interviewees were candid in their responses, offering insights that could not be ascertained from reviewing documentation. Their comments reveal significant challenges in implementing CbCR for their clients, along with their role in supporting their clients. The complex and significant scale of the CbCR requirements in Australia, being some of the most challenging in the world, make NZ look like ‘paradise’ in another world. The relatively simple spreadsheet to provide data, along with explanations of risk areas, for NZ-headquartered multinational corporations may suggest they will face more onerous obligations for their outbound subsidiaries, especially if they are in Australia with the complex local file requirements.

With respect to the role of tax practitioners in CbCR, the NZ approach is in stark contrast to that of Australia. Inland Revenue has taken the initiative, in a similar fashion to other international taxation measures, to work directly with multinational corporations and effectively cut advisers out of the process. Multinational corporations have been left to contact their advisers where they saw the need for support. While Inland Revenue sees this as effective for them, the view of tax practitioners is one of frustration and concern over this continual eroding of respect for the taxpayer-agent relationship.

Overall there is little in the way of positives from CbCR from the perspective of tax practitioners, although it may assist with shedding light on global tax practices, including revisiting value chains. It is predominantly another significant addition to the compliance burden of multinational corporations, made worse by the lack of consistent standards globally. One positive has been the consultative process the Australian Tax Office has applied to working through the practical implementation of CbCR and addressing issues of uncertainty.

Thus, there would appear to be few ‘gaps’ in NZ, with Inland Revenue having a close relationship with all 19 NZ-headquartered multinational corporations, leaving most of the inbound subsidiaries to rely on what is happening with their parent. New Zealand does not impose any local or master file requirements, but will make use of overseas local files information when it is shared. The Australian Tax Office has worked directly with tax practitioners rather than with the affected multinational corporations. In contrast, Australian tax practitioners have indicated that many of their clients did not look at their CbCR requirements early on, and will rely greatly on their tax agents to assist them through the process. With a large number of Australian-headquartered multinational corporations, the size of the task in Australia makes that of NZ pale into relative insignificance.

In choosing two jurisdictions where the approaches to CbCR are at opposite ends of the spectrum (reflecting both legislative choice as well as reality), this has revealed insights that the selection of only one of these jurisdictions would not have revealed. This further supports our choice of multiple exploratory case studies.

Unsurprisingly, a significant limitation of this research is the relatively small number of interviews that were conducted. While this is mitigated to an extent through the interviewees largely commenting on the same issues (and in this regard a significant degree of saturation was achieved), other tax professionals may have commented on other issues or taken a different perspective. Likewise, only two revenue authorities were included in this study; with 115 signatories to CbCR (albeit much fewer have ratified domestically their CbCR obligations), the views of other revenue authorities may differ, especially where they have different local file requirements.

One clear area for future research will be to interview tax practitioners in three to four years after CbCR has been operating to assess its effectiveness, how multinational corporations have approached the issues raised during the interviews in this study, and what further concerns have arisen from the perspective of tax practitioners and multinational corporations. Indeed, the interviews could be expanded to include the CbCR project manager(s) or their equivalent in a number of Australasian-headquartered multinational corporations.