

## Australasian Tax Teachers Association Conference 2018

### ENHANCED TAX REPORTING REQUIREMENTS UNDER THE BEPS PROJECT: PREPARING THE PROFESSION

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#### Abstract

*As part of the OECD's Base Erosion and Profit Shifting (BEPS) project, country by country reporting (CbCR) has been promoted as a mechanism to enhance transparency with respect to the operations and tax planning activities of large multinational enterprises. 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. In this paper we adopt a cross-country comparative case study analysis, involving two jurisdictions, Australia and New Zealand, which have implemented CbCR. This paper reports on a series of semi-structured interviews conducted with key tax professionals in large chartered accountancy (CA) firms, along with revenue officials, with the aim of ascertaining the readiness of the profession and their MNE clients for CbCR. The interviews not only reinforced our prior expectations based on documentary analysis that the two jurisdictions approaches would differ, but revealed significant differences in the level of involvement of tax practitioners in preparing for CbCR, and between the Big 4 and mid-tier CA firms. At this stage our analysis should be interpreted with caution as CbCR is yet to be fully implemented across all jurisdictions that have indicated their commitment to it, and the implications from revenue authorities' analysis of the reports have yet to be experienced.*

#### 1. INTRODUCTION AND BACKGROUND

This paper reports on aspects of a project which 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.<sup>1</sup> Specifically, Action 13 provides for enhanced tax reporting through a three tiered standardised approach for multinational entities requiring a master file (MF), a local file (LF), and a County

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<sup>1</sup> 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>.

by County (CbC) report. Unless otherwise mandated, such reports will be confidential between relevant revenue authorities and not available to the general public. Increased transparency requirements will have a significant impact on the accounting and legal 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.

CbC Reporting (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. Taxpayers, and potentially professionals, are currently under prepared for this BEPS initiative. Chartered Accountants Australia and New Zealand (CAANZ) 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. In December 2015, Australia passed legislation implementing Action Item 13 for CbC Reporting. While New Zealand's (NZ's) Inland Revenue (IR) released an Issues Paper in February 2016 on automatic exchange of information (AEOI), with respect to CbCR, it remains at the data collection phase and has determined that at this time no law changes are necessary.

The resulting research is intended to enable the accounting profession, particularly in Australia and NZ, to be apprised of the effect of the enhanced tax reporting requirements. In turn, this will enable advice to be disseminated by professionals to their affected clients, allowing those clients to meet their tax obligations within the required time frame. These developments will extend beyond taxation such that those MNEs 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 MNEs' 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 MNEs. If the reports produced through CbCR should be made public, as is proposed by the European Commission (EC) as discussed below, then investor-relations and media personnel will need to be prepared. Thus, the larger project contributes directly to both the implementation of the CbCR measures, along with the 'education gap' that the researchers believe needs to be closed between current readiness and awareness of the requirements of this key BEPS initiative. Furthermore, it will allow professionals to advise clients of training, personnel and infrastructure needs as well as outlining the benefits that enhanced tax reporting may achieve.

The project specifically addresses a key topic area, as identified by CAANZ, 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 accounting and legal 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.

The research question addressed in this paper is:

## What are the current ‘gaps’ and how best to prepare the Australian and New Zealand Profession for Enhanced Tax Reporting Requirements under the BEPS Project?

We employ a multiple case study approach to explore the approaches taken in Australia and New Zealand to the implementation of CbCR. Case study as a research method is often maligned and considered to be a non-scientific approach to undertaking research. Notwithstanding this view, case study research is used extensively in academic enquiry in traditional social science disciplines as well as practice-oriented fields. When adopting a case study approach, the design and analysis considerations are of prime importance, more so than the description of events or the scenario under review. As Yin states, the need for a case study arises out of the desire to understand complex social phenomena and allows investigators to retain the holistic and meaningful characteristics of real-life events.<sup>2</sup> As a consequence of this paper taking a comparative case study approach, the findings will not necessarily be directly transferrable to jurisdictions other than Australia and NZ. Nevertheless, the findings should be indicative of what could be expected through different approaches to implementing CbCR as well as to other cross border transactions within the area of taxation.

The remainder of this paper is structured as follows. In section 2 we review the CbCR literature, focussing on Australia and NZ, as well as developments in other jurisdictions, especially the European Union (EU). We then outline the research methodology employed for this study 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. Section 5 sets out our conclusions and areas for future research.

## **2. LITERATURE REVIEW**

This section provides an overview of CbCR, followed by a summary of the relevant literature with respect to the two key jurisdictions for this study, namely Australia and NZ.

### **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, including Australia and NZ. Included in the BEPS package of 15 Action items are four minimum standards which 100 countries have currently agreed to implement through the inclusive Framework.<sup>3</sup> In particular, included in those minimum standards is the OECD’s standardised approach<sup>4</sup> which requires MNEs to articulate consistent transfer pricing positions and provide revenue authorities with useful information to assess transfer pricing and other BEPS risks. This 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 (CAAs), which collectively will form the basis for government-to-government exchanges of the reports. Importantly, these standards do not

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<sup>2</sup> Robert K Yin, *Case Study Research: Design and Methods* (Sage Publications, 5<sup>th</sup> ed. 2014).

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

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

propose mandated public disclosure similar to that proposed by the EC; disclosure will be limited to the relevant revenue authorities.

The OECD included CbCR as part of its Action 13 recommendation. Specifically the OECD states<sup>5</sup>:

“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 MNE 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 [MCAATM];
2. Bilateral tax conventions; and
3. Tax Information Exchange Agreements (TIEAs).”

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;<sup>6</sup> and second, additional interpretive guidance on the CbCR standard.<sup>7</sup> These documents provide essential information that will give certainty to tax administrations and MNE 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 CAAs 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 MNE, as provided in Article 3 of the Model Legislation in the OECD’s Action 13 Report. Longhorn et al.<sup>8</sup> 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 MNEs 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. MNEs must also identify each entity within the

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

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

<sup>7</sup> 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>.

<sup>8</sup> 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.

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 MNEs 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.

In February 2017, the OECD released the terms of reference and methodology for peer review of the Action 13 minimum standard for CbCR.<sup>9</sup> 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 ("the CbC MCAA").<sup>10</sup> 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 (EC) is taking a lead on CbCR. In particular, the EC is proposing to require large multinational enterprises (MNEs) to disclose publicly the income tax they pay within the European Union (EU), on a country by country basis.<sup>11</sup> In addition, MNEs will be asked to disclose how much tax they pay on the business they conduct outside the EU. For those tax jurisdictions that do not abide by the EC'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 EU developments in their study on CbCR in the context of enhanced corporate accountability.<sup>12</sup>

## **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 €780 million), as well as to the local operations of foreign headquartered MNEs in Australia.

Under the new law, the parent company will be required to file CbCR with the home tax authority. A Local File and Master File will need to be filed with the Australian Tax Office (ATO). The Australian multinational package also introduces new financial reporting disclosure requirements, a new multinational anti avoidance law (MAAL), and increased penalties on adjustments made by the ATO in relation to anti-avoidance and transfer pricing.

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

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

<sup>11</sup> 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](http://ec.europa.eu/finance/company-reporting/country-by-country-reporting/index_en.htm).

<sup>12</sup> 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.

The ATO has developed a Law Companion Guideline<sup>13</sup> 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 Guidance provides an outline of the general principles and processes the ATO will take in relation to exempting a particular entity from some or all of its CbCR obligations. The ATO has also released a guide entitled 'Country-by-Country reporting: Questions and Answers'<sup>14</sup> which addresses some of the more frequently asked questions in relation to CbC reporting.

In NZ, from 2017, IR has advised that NZ headquartered corporate groups with annual global revenue exceeding NZ\$1.2 billion (the equivalent of €780 million), will be required to produce CbCR for all income years beginning on or after 1 January 2016.<sup>15</sup> 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 only 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 MNEs subject to CbCR need to complete.<sup>16</sup> 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 has been determined unnecessary in NZ as IR has sufficient enforcement powers in ss 17 and 35 of the Tax Administration Act 1994 (TAA). Nevertheless, IR may seek to codify CbCR requirements into legislation to signal NZ's commitment to CbCR. The MF and LF will not need to be provided to IR as this may impose undue compliance costs, but will need to be provided on request or during an audit.<sup>17</sup> 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.

### 2.3 Other contributions in the literature

Outside Australasia, in addition to the issues raised in the prior subsection, literature has identified the variations in country reporting requirements, and how this will need to be taken into account when MNEs complete the CbC reports. The issues can be categorised into operational, technical and reputational. Most of the literature to date has focussed on the first

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<sup>13</sup> 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>.

<sup>14</sup> 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/>

<sup>15</sup> 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.

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

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

two areas, with much less on the reputational impact of CbCR. In this latter category (reputational), this could include issues such as (see EY 2015)<sup>18</sup>:

- What would happen if the CBCR template was made public?
- Do you understand the impact of what you are sharing before you share it?
- How might your template compare against peers?
- How do the ‘messages’ in the template align to group’s tax strategy?
- Have you considered the value in leveraging this work to publish your ‘Global Tax Footprint’ as part of your Corporate Social Responsibility report?

In relation to overall preparedness, Thomson Reuters have conducted a survey as to the extent to which MNEs are ready for the implementation of CbCR. In the most recent 2016 survey, Thomson Reuters find<sup>19</sup>:

- 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.

Thomson Reuters also state in another report<sup>20</sup>:

“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 IT 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 MNEs (and potentially their advisors) are not yet fully prepared for the commandment of CbCR.

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<sup>18</sup> 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).

<sup>19</sup> See further: Thomson 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](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)>.

<sup>20</sup> 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 al<sup>21</sup> review the prospects for a global public database on the tax contributions and economic activities of MNEs. 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' state<sup>22</sup>:

“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?’”

## **2.4 Key themes emerging from the literature**

Our review of the literature reveals a number of common issues or themes which we briefly outline. Prior literature is dominated by comments from professional firms (especially the ‘Big 4’ Accounting firms) and other commentators, with a number of contributions from academics merging more recently.

Ahead of the implementation of CbCR, MNEs have been encouraged to review their existing systems, practices and information; and to undertake a ‘dry run’ prior to their first reporting obligations. 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 MNEs (including the necessity for additional resources, such as appropriately skilled personnel, and technology capable of collecting and forwarding required information). MNEs (and their advisors) need to consider challenging tax authority decisions where these appear to extend beyond. MNEs, and their advisors, will need to monitor changes in relevant legislation and regulations, such as threshold requirements.

These issues become of greater importance as the first reporting deadline becomes closer. Concerns have been raised over maintaining confidentiality of information, especially as it is exchanged with other jurisdictions. To this end, the MCAATM, DTAs and TIEAs provide a level of comfort with respect to maintaining confidentiality between signatory jurisdictions and within their competent authorities.

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<sup>21</sup> 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).

<sup>22</sup> See above n 21, at 3.



In relation to Australia, one issue identified as a potential concern are the unique Australian Local File (LF) requirements. This will affect reporting to the ATO. Calls have been made for the ATO (and IR) to provide clear guidelines of what will be required for CbCR obligations, including interpretation of, and compliance with, legislative reporting requirements. The ATO, and to a lesser extent, IR, have been releasing additional guidance ahead of the first reporting period.

### **3. RESEARCH METHODOLOGY**

A mixed methods qualitative approach has been selected for this study. An overarching interdisciplinary socio-legal approach is adopted, supported by the findings from semi-structured interviews. The first part of the study involves an analysis of the theoretical legal and policy concepts within both a social and historical context and is inductive in nature. Broadly, the research question is addressed within the existing Australian and NZ legal frameworks, and current policy discussions to assess developments in this aspect of the OECD's BEPS recommendation on CbCR. This allows 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.

Second, the authors undertook semi-structured interviews with key personnel in the 'Big 4' and second tier accounting firms, as well as revenue personnel in the ATO and IR. 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 the prior literature analysis. One 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 MNEs, data will be exchanged in 2018 unless an exemption has been granted from the relevant revenue authorities. Consequently, our analysis of the key themes and challenges that CbCR gives rise to, along with recommendations for education of MNEs 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 (a copy is provided in Appendix 1). 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 (see Appendix 2 to this paper), 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 about six months in 2017.

## 4. RESEARCH FINDINGS - INTERVIEWS

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.”<sup>23</sup> 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, our preliminary assessment suggests that, based on our literature review, 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’ with the latter a ‘follower’.

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 official (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. Our analysis of the transcripts is limited, not only by the number of interviews, but by the time that we have had to detect the emerging themes and areas of particular concern to tax practitioners with respect to their clients’ readiness for CbCR. We intend to complete the remaining interviews, and associated transcription and analysis before year end.

### 4.1 Interviews with tax practitioners

Given the timeframe for undertaking the interviews and subsequent exploration, the analysis emerging from the interviews remains preliminary at this time. That said, we are able to comment on the themes emerging from the early interviews. It is with a reasonable degree of certainty that we can state that professionals and their clients in Australasia will be ‘challenged’ to be ready in time for the commencement of CbCR in 2017-18, along with the global impact through clients having operations in numerous other jurisdictions. We also expect a steep learning curve for all during the first year or two in which CbCR is operative. This is particularly so for Australia where the scale of affected entities is much larger and the challenges greater. The NZ situation differs as will be explained later in this section of the paper. The following discussion largely relates to how CbCR is being rolled out in Australia unless otherwise indicated.

#### 4.1.1 Australian tax practitioners

Our interviews revealed that CbCR is not well understood by MNE clients of major accountancy 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 MNEs. It is arguably the most significant addition to existing transfer pricing obligations faced by MNEs. 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”.

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<sup>23</sup> See further: <https://tax.thomsonreuters.com/blog/understanding-beps-country-by-country-reporting-cbcr-and-why-technology-is-critical-for-compliance/> (emphasis added).

So, we have come across situations where we are talking with our teams. [With] the overseas teams [we are] telling them, explaining [to] them, why this is required. Because sometimes if it's a huge client, like having fifteen countries involved, it's being done somewhere else, they might not have even been aware of this. ... So, it is important to kind of look at it from both the perspectives, inbound, outbound. In fact, as you say, like [a] few companies don't even know, about this. That's more relevant [for] private institutions or private enterprises who just for example, [have] just a branch here.

Australian Practitioner 1

Education has been 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. [W]e have actually been developing tools to assist in that lodgement. So, we have a CbCR lodgement tool, and we have a local file lodgement tool.

Australian Practitioner 2

The message varied slightly depending upon whether it was an inbound or outbound entity (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 the recommendations from the literature, did not undertake 'dry-runs':

I think it's a slow burn, they're aware, but everyone sees it as a future issue. Like, particularly, let's say for the outbounds, as much as we've talked to outbounds about doing dry runs, about, you know, looking at what the output looks like on the dry run basis so you can restructure before you're actually in the regime, a lot of have been sort of playing with it, 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 then, with the filing, I'm getting loads of questions, this is on a global basis now, where people are suddenly realising, "I'm going to have to lodge a C by C report in an XML schema format", and going, "oh, we haven't even started to think about that", and you're like, "you know what, you're only like five months away now?". 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. ... I don't think anyone has expressed surprise to me yet about how fast it has come in, because I don't think anyone was really tracking it at the client level. ... They just expect us to tell them when it's coming in, they don't really know how long it's been in the gestation period when we tell it to them, because they are not necessarily tracking the OECD announcements.

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 is got to be around inconsistency, right? At the end of the day, it was supposed to be a global footprint built on an OECD model, that was supposed to roll out across the globe, and if everybody had done exactly the same thing, it probably will be still a pain, but not as painful as every single country has, well, not every country, a lot of countries have decided to, you know, add to it, subtract from it, so there are a stack of different requirements emerging.

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 create a lot of extra work at the headquarter level.

Australian Practitioner 4

From a positive perspective, Australian Practitioner 4 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 suggests 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.' Furthermore, CbCR will 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. But transfer pricing, if it is done right and if you've got the right people, the right capital and the right assets, the right this, in the right places, then there still is the opportunity. So, 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

Overall 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 with the ability for 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 MNEs are the notification requirements that accompany local files, along with the penalties for noncompliance, and use of an accounting/tax firm. For example:

And because there is significant penalties in different countries for late lodgement, or failure to lodge, then that’s really important. And so, I think for the first year, or for the first couple of years, most of our clients will be using the Big Four in some way, either as a complete service provider or to provide particular parts of the service. [S]ome of our clients will do most of it in-house, particularly if they have got sophisticated tax teams and then they will just come to us for the really hard stuff that their own in-house teams can’t figure out. There is very few clients who can do this without some level of advisory, external advisory assistance.

Australian Practitioner 2

Concern has been expressed over which accounting rules will prevail. Australia’s specific additional requirements, such as with respect to the ATO requiring notional consolidation are also an issue:

I think it’s driven largely by the accounting rules as well, because if you look at the regulations, it says whether it’s consolidated or not. The moment that comes up, you like, “ok, what is consolidation? Should it be consolidated?” Or you look at whether it’s actually consolidated. So then comes up the question of control, not controlled, a JV ... What happens if it’s like 40:60? Who is controlling it? Should you consolidate it? If you consolidate it, whether it should be from the Australian accounting standards or the global parent’s accounting standards? So, all these questions come in. ...

And especially from Australian perspective, there is this sub-section which gives the Commissioner to notionally consolidate, that’s really something which is new and unique, which we haven’t really seen in other regulations or OECD’s regulations.

Australian Practitioner 1

Views have been critical of the ATO, with a hope that the ATO will have patience as MNEs make changes to their systems:

[T]he Tax Office threw a little bit of a curve ball into all of that with the option to, if you lodge a full local file, you don’t have to lodge, or you don’t have to answer all the questions in the international dealings schedule in the company tax return if you lodge everything at the same time as you lodge the tax return, which the Tax Office have now just extended to the 31st of August, if you are going to do that. So, again, there is a little bit of a Mexican standoff there about, “well do we give ourselves more time on the local file, but have to answer all the arduous questions or do we really try and put the effort in to get in the local file.” ... [O]nce you get past the 31st of July, you are sort of committing to have the local file done by the 31st of August, otherwise you are lodging late, and of course lodging any document late for a significant global entity is now, umm, puts you

at risk of some fairly hair-raising penalties, so, we're not keen to take a chance on that being involved.

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 MNE 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 (US) was cited as one example where an exemption has been granted for (at least) a year given the US has only recently committed to CbCR.<sup>24</sup> The issue of exemptions will be important for the first year or two, with only a local file needing to be filed with the ATO:

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

In the view of the practitioners, there is not a clear divided 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. ...

I think it's more to think about developed and developing from TP perspective. For example, India, is quite aggressive and it's quite developed in terms of TP. Although, you tell me it's a developing country. So, I would not say developed and developing from a general perspective, but if you look at it from a TP perspective, so those are the developed TP markets, which I would say, yes, definitely.

Australian Practitioner 1

I think [developing countries], I think that they're winning, right, because, really, they would never, on their own, have gotten to this level of sophistication. They would never have implemented laws without the OECD basically giving them draft laws to then enact

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<sup>24</sup> 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.

at home. So, 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.

Australian Practitioner 2

Key issues for consideration by MNEs identified by tax advisers relate broadly to data and content of CbC reports. Australian Practitioner 1 suggested that the following questions need to be answered:

- The choice for the source of data;
- Whether to take a top down or bottom up approach (necessitating an analysis of the pros and cons of each);
- An evaluation of the adequacy of internal controls and processes regarding statutory accounting (should this be centralised or decentralised, taking into account multiple data sources);
- The quality of the data (including its accuracy and reliability), and the associated risk exposure;
- Interpretation of the contents and definitions in CbCR, MF and LF as applies to each MNE;
- What is (and what is not) a constituent entity, necessitating a (central) record of all entities in a group that should be reliable and current;
- The period of coverage by the report, made more challenging when accounting periods may differ for some group members;
- Ensuring leadership and project management resources are in place to deal with critical decisions involving:
  - handling inconsistencies in the data reported due to a lack of leadership,
  - ensuring timely completion of the new deadlines that CbCR adds to existing deadlines for other activities,
  - determining which team takes the lead (e.g. from transfer Pricing, Finance, Group Tax Compliance or Risk?), and
  - who signs off on the report (one central report will be reviewed by numerous tax authorities).

Ensuring accurate automated and technological tools are in place to collect and report the information. 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), or a taxation issue. It would appear, based on the interviews, International Tax is taking the lead, which we consider to be appropriate

given the higher level of divergence in accounting practices between jurisdictions compared to transfer pricing. For example:

I have two experiences, in both Global Tax led, the discussions and everything 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. ... So, it really depends on how the client wants, but we do recommend, if it gets very complex, if we feel that there is a need to look at it from a company perspective, we do get [the accounting team] involved.

Australian Practitioner 1

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 MNEs 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:

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

Australian Practitioner 2

[T]he ability to be able to get the data that's in the OECD format for the country-by-country report, I think, there's no native system for most clients that picks that up. You know, number of employees per jurisdiction and that sort of thing, there's no native system where head office can go "yes, I'll press the button and that will print out." Presumably that will come with time, but just the hassle of the, the administrative burden of pulling all that together. And the other burden is probably, that we are seeing that clients are, perhaps getting a little bit upset about, is the need for software, to lodge this. Like you can't just lodge a PDF file, you know, you can't just lodge a PDF document, you can't just do this, it has got to be in the XML schema, whatever the hell that means, it's all text speak, but anyway, you need a software provider. Software providers are making hay out of this, like! ... We're looking, I think we have selected a software solution, but there aren't a huge number out there. [T]here's a bit of an oligopoly, oligopolistic effect in the pricing.

[C]ertainly when you are starting to deal with tax authorities and you are looking at relative tax, tax ratios to turnover and so forth, across the jurisdictions you are working in, then consistency of data across those jurisdictions suddenly becomes very relevant, and so it's not so much the inability to get the data, it's making sure the data is actually clean, and making sure the data is not telling false stories.

Australian Practitioner 3

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. ...

I think the thing is, is that some clients thought that technology was going to solve all of their problems and they could take a technology solution and, you know, basically, out would pop ... an answer at the end. And, so, we've talked to a lot of clients about it being a process and, you know, there is a lot of technical interpretation and definitional stuff; how do you actually fill the data for a certain company, do you take a bottom-up or top-down approach? And so, there's a lot of smart thinking that has to go into it before you get into the technology. So, technology enables you to, to in the end, produce the report, but you have to have the guidance and the smart thinking and the processes in place together with the technology.

I think even third party software vendors have found it a harder, sell, in the end, than what they were thinking, or they've gone and ... over-promised and under-delivered.

Australian Practitioner 4

Transfer pricing is critical to CbCR, including developing a consistent approach across a MNE:

What's ... the TP 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. ...

So, it really opens this entire ambit of risks here and there. But, it's really important, like, to make them understand, this is still your opportunity to get everything aligned, rather than just sitting and waiting, for things to go wrong and then trying [to] explain them.

Australian Practitioner 1

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

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

So, that's raising some concerns for a few clients, and they're like "what if I just have a subsidiary [in the EU]." Like, they are headquartered somewhere out of EU and they just have a subsidiary there, but because you are there, it might get published. So, those kind of clients, if they are in EU, they are fine, because they know, ok, it is going to get published. But we have other clients who are just having small operations there, they are asking these kind of questions, "What will happen if I just have a subsidiary there, will it get published?" So, really for those clients who are not in EU, then that might be the top process but the ones that are already there are kind of ok with the fact that its anywhere that they are doing is published.

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

Concern has been expressed over the way in public information, such as that disclosed voluntarily by some Australian MNEs, 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. I have a reasonable amount of faith in most of the other OECD jurisdictions' tax authorities in the same way, a certain weakness coming at the Luxemburg tax authority, notwithstanding. ... I think the confidentiality aspect of it worries me less than the data being misused inside the tax authorities, in ways that the OECD specifically said this is, you are, member countries are not to use it as a means of raising taxation ...and those sorts of approaches to the data that the OECD action points specifically said this is not what this data is for and it is not to be used in that way.

The question is, what are the effective sanctions, for that, if somebody does start to do that? What it would require is, that that jurisdiction be cut out of the data sharing, entirely, and that's not easy to do, whereas multilateral data sharing is, because, as I understand, this doesn't go back to a central repository and then get shared, it's shared on a one-to-one multilateral basis. So, that would mean that every tax authority that, you know, if that were proven to be happening in a jurisdiction, and I think that would be hard to even prove that it was happening in a jurisdiction, but if it were to be proved, it would require everybody who has signed up to the CbCR exchange agreement to say "no, we will not share data with this jurisdiction" or "we will not share data with that jurisdiction or any other jurisdiction that shares data with that jurisdiction."

Australian Practitioner 3

Related to this are concerns over the use of the data under CbCR by some revenue authorities, including that it may be leaked or some form of formulary apportionment is applied. This may in turn see the OECD review CbCR and recommend that the reports be made public:

I think they are worried about the confidentiality. ... [W]hether it's fair or not, it's out of their control, you know, tax authorities around the world have said they're going to treat

it confidentially, etcetera and so forth, and they are going to have protocols around how they share that information. We've been telling our clients that you can expect that in some countries, in some places, it will be leaked, and that ultimately, you know, this is probably a step towards public disclosure at some point. So, I think in the OECD's program, in a couple of years' time they are going to do a review, and it wouldn't surprise me that one of the recommendations out of that review might be that it is made public...

[I]n practice, what will happen is that there will be a global formulary reapportionment lens applied to the CbCR report by each of the individual country tax authorities, and if they don't feel like they're getting their right, you know, their fair share of tax, based on that kind of, you know, global formula, which might be a head count divided by revenue, or profit, then, it's likely that they would be subject to a risk review, or an audit. I think that most of our clients, believe that to be the case. ...

[B]ut for those companies who are maybe more complex, [where] there is a real economic reason for why their earnings are different in different countries, they are going to have to spend a lot of resources explaining it, and they are going to be fighting this, you know, what I would call, self-interested governments, which is also fine. [The] problem is, the mutual agreement procedure to relieve double tax is so slow, and archaic, that, you know, on the one hand, multinationals are giving up transparency, they've got more complexity, not less, and now they've got a mutual agreement procedure system which is broken.

Australian Practitioner 2

I would be interested in hearing the, from an Australian perspective, the Tax Office's view on what they would do if another country did legislate to publish, in whatever form, some or all, CbCR information, because, it would be difficult to reconcile that with the secrecy provisions that we currently have in the Admin Act, and the '36 Act.

Australian Practitioner 3

Having the necessary accounting 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 MNEs. Comments received from interviewees include:

So what's happening is, like, a few of the clients are not having the accounting systems, consistent, for example, it's quite decentralised. [So] the first question which comes from them is "how am I going to get this data?", and they don't have the appropriate technology to do that. So there [are] various tools which [we] have ... [which] ranges from like operator software just being installed in your system to doing everything right from extraction, to filling out the CbCR data, analysing it. Everything. There are a few others who are just kind of picking up CbCR and analysing it. So, there are these range of options. Even there's one specifically CbC tool which helps if you have like 50 countries, you are going to prepare 50 local file documentations. ... So you have this drag and drop thing. So, even if you had a TP [document] in the past, you can just drag and drop. It creates that as a template and when you finish one, you are going to start using that as a template and it [these are] shared sections everywhere. So, the moment a client makes a change in one of them, like, let's say, group overview, and when they change one thing in one document, it changes things in 50 docs.

Australian Practitioner 1

[S]o the CbCR tool is a globally developed tool, because every country in the world, what's happened is that the CbCR template itself, has had, probably, has not changed, no matter what country you are in, so, it's the information that the OECD has put out there on Action 13 and no one's changing it. So, globally we can develop a tool, which is, whether you are sitting in Germany or Sydney or London, it's the same information, so it's the same tool that can extract that. [This] needs to be lodged in XML schema, and so you need to basically have a tool which converts it from Excel into XML. And then for the local file, Australia is one of the very few countries that have introduced local lodgement in XML schema as well, so we needed to develop a tool for that. ...

The dream would be able to, you know, 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. ... The reality probably is that there is a bunch of people taking different sets of information and trying to use that information to produce the data that the template requires. So, there is a lot of, you know, what I call Excel spread-sheeting, and just people hours, just trying to make sure that they're cutting the data in the way that OECD and other tax authorities, and tax authorities want.

Australian Practitioner 2

In order to make CbCR compliance work effectively there needs to be leadership 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. Someone has to take the lead, because in some of the cases we have seen that the parent has started preparing something, but there is no one really coordinating it, with, for all the countries. So, what's happening is no one, for example, is keeping track of what are the timelines in all of the countries, where is it going to hit you first.

Australian Practitioner 1

Going forward, it will be important that MNEs 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 LF. Decisions need to be made sooner rather than later with respect to the requisite technology and accounting systems that an MNE uses. Currently MNEs 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'.

Looking to the future under CbCR:

[W]e'll, perhaps have technology solutions which either mean governments will be plugging in directly to the general ledgers and sucking out private information, or they will have robotics and artificial intelligence to collect the data, analyse the data, and the

government will have the same. And somewhere in between, you know, technology and our robotics and artificial intelligence, their pipes are going to get connected, which means that there's a disintermediation of accounting firms and advisors, you know, this is where we are heading, right?

Australian Practitioner 2

It is also important as far as practical to work cooperatively and apply BEPS in a multilateral approach, which goes beyond just CbCR:

We've got countries coming together, to say, and recognise, that we need to take action, but if we don't do things multilaterally, I know we could just, well, preface it or something, I mean just sign them off. However, we operate in our own jurisdictions in a manner that suits our economy and our political sphere and, and all of that around it. And, so, BEPS and all the BEPS measures have this difficulty. Our, Google tax, diverted profits tax, multinational anti-avoidance law, will have differences to the UK's, to whatever the US eventually put in, to any others. And so, you will have differences in each jurisdiction and, tax directors operating, wherever they operate, but operating in different jurisdictions, are going to face this problem of knowing the broad BEPS measures, but seeing the differences in each jurisdiction and I think that's true of everything, not just the CbCR.

Australian Practitioner 1

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 MNEs.

#### *4.1.2 New Zealand tax practitioners*

With respect to NZ tax practitioners, the approach differs significantly to that of Australia. This 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 IR directly contacting the 25-30 NZ headquartered MNEs 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 IR.

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

I suspect that, given there aren't many, according to Inland Revenue, organisations that would fall within, that there would be maybe one, at best, in one of ... the other offices. From, from our perspective here, I'm aware of maybe two subsidiaries that could form part of a multinational group that would meet the thresholds.

NZ Practitioner 2

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

So, they've embarked on an exercise or a program where they've gone out to provide an example of the CbCR form that needs to be filled out and have sent a number of sort of letters, making sure that the taxpayers' understand what they need to do and, are providing an opportunity, I suppose, to engage with the revenue authority directly if they do have issues, or concerns or questions. Some of our clients have taken IR up on ... that offer. Some of our clients have been a little reluctant to engage with IR 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 IR 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 IR 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 MNEs may have abusive structures in place, which is helpful for revenue authorities, the additional reporting obligations provide no real benefits for MNEs, 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:

I don't think, you know, just because we are having to provide CbCR information through to revenue authorities, I don't think they are going to find anything new. [I]t'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 accounting 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:

Well, it's more, 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? ... These guys are just going to see it as, I'm sure, as paper filling, it's even with, as we ... have the common reporting standard, as we're getting our heads around that and how it applies and the breadth of where it's gone to, and what needs to be done. ...

[W]here is the value-add? We just look at it and say, "Well, yes it's there, we know we are going to find it, but there's no point in investing a whole lot of time in it until we get somewhere on the road with it". ...

That's going to be a difficult for some people like ourselves to identify [those that need to be aware] because we don't see what's happening in the parent or other entities offshore, so, we'd have, at best we could guess it, but we wouldn't actually know.

It's pushing the job to the taxpayer isn't it? It's making the taxpayer do all the heavy lifting; here's everything you need, and I think a lot of it is probably already there anyways.

NZ Practitioner 2

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

I suspect for the subsidiaries of the large multinationals, that they'll possibly push it back to us to fill, to put the numbers in the boxes. ... [W]hy we can't just send the Inland Revenue's set of accounts, which have got full disclosure in them anyway, on certainly related party issues, and why we have to then take that information and put it in another form ... and why we're doubling up on information that's out there. ...

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 MNEs 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, so it's really clients running the necessary reports in their ERP system and then populating a Excel spreadsheet. 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 tax credits:

It's the underlying tax credits that's the problem, and no one recognises it, and you're still paying tax somewhere. [B]ut all this, with little or no tax and clever structuring [that] the large multinationals can do and get the effective tax rates down to little or nothing, yes, that's, that's a problem, besides the other. And 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 MNEs 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. [T]hat has then become problematic from a commercial perspective, around obtaining necessary approvals to, do business in countries and sell certain types of products. So the information being disclosed is not just being used for tax purposes. Now, these are governments ... whereby there is not a high standard [or] high corruption environments.

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. But, I guess, it depends on the nature of, of what the disclosure is and the information that is going to be released.

NZ Practitioner 2

In terms of key 'takeaways' from CbCR in NZ, tax practitioners there is some surprise as to how straightforward the process has been with relatively little difficulty involved. Secondly, in an environment of increased transparency, what IR could have requested from MNEs could have been much greater, especially if the approach of the ATO had been followed, such as requiring schedule 25A filing requirements and encouragement for MNEs to make their reports public through the voluntary disclosure process. Thirdly, there is concern that IR is not respecting the tax agent's relationship there client:

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 ATO, as already noted by the Australian tax professionals interviewed, is to engage directly with each affected MNE's tax agent. A number of tax practitioners have been actively involved in the ATO's 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 ATO has had to clarify some definitional issues with the OECD. One particular benefit for the ATO is greater insights into the value chain:

[T]he information that is provided under the CbC report and master file gives us better insights into the global value-chain and where, in this case, the local entity sits within that global value-chain and how value is created, which we would otherwise, if we did, have a risk suspect, or we did have a risk hypothesis to test, we would probably be collecting that information as part of a risk review. So, in that case, I think we are bringing some of that information forward."

In terms of the increased scrutiny, it is a balancing exercise between identifying where there is apparent noncompliance as well as where things are being done correctly:

And that is to, one, ensure that, well those who are doing the wrong thing, that we can readily identify who they are and remedy that through some sort of treatment or, you know, compliance action. But, I think conversely it's also about trying to get greater levels of assurance that, for those multinationals who in actual fact are doing the right thing and are paying the right amount of tax.

Overall this should facilitate a more accurate risk analysis by the ATO of MNE operations from a tax compliance perspective. In terms of looking at the Action 13 report, the ATO states:

[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. So, I think, perhaps a little bit more leeway has been given with, you know, the master file, local file, how they're required to be prepared, whether they're required to be prepared, and so I think you'll find that there's a great deal of consistency with the CbC report because they do have the schema, outlining how it needs to be set out and exchanged, and reported, but I think because 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 ATO 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. In terms of information required, the ATO emphasised:

I think one of the really important things here is that, if you look at our design, we have very much said that we aren't asking MNEs to create information that doesn't exist. So, that also includes the point that if an entity, you know, if there's an agreement that they don't have access to, or they can't access, that's ok. They can positively indicate that on, on their disclosure in their CbC reporting, particularly on the local file, that, you know, the agreement doesn't exist or they can't have access to it, or they don't have access to it. So, I think it's important to, you know, sort of clarify that we are not mandating that the information has to be obtained. We're saying, if you do have it, then, you know, it should be provided. ...

We're listening to the consultation group and submissions so that we can hopefully provide or, I guess, work to a pragmatic solution that can allow us to collect the information we need to manage the international tax system, but addresses some of the issues that that group has brought to our attention in terms of being able to, accessing or being able to accurately report that information.

The ATO believes it has achieved a degree of confidence from the consultation process, which has been critical in the work to date. Through our interviews with Australian tax practitioners we were able to confirm that those involved in the consultation process see value in it. The ATO commented:

I think it's, you know, the size and the broad representation of the consultation group, you know, that's probably given me some degree of confidence that, you know, we are addressing the key issues and, that where we are producing guidance, it's hitting the mark and it's the guidance that the market's demanding. So, I think without that consultation group, I think the process would have been a lot more difficult, but, it's good that they have been willing to share and help sort of co-design this whole implementation process.

Importantly, the ATO reemphasised that in Australia the CbC report will not be made publically available. However, should the ATO 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 ATO could see any benefits to MNEs for having the information publicly available the response was:

[I]t's really hard for me to answer, it's not, not something that we've discussed, you know, even with the consultation group, so, I don't have a view around whether corporates would, have any benefit, or see any benefit in publically disclosing, you know, relevant information with regard to CbC reporting.

Exchanges would be limited to particular jurisdictions via the Common Transmission System (CTS), which 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 MCAA in place, or otherwise a bilateral agreement in place. At the moment, I think the count is 65 countries that have also signed the MCAA and also, those agreements, you know, closely govern the exchanges and make sure that we ... are exchanging on the same terms, basically.

The ATO sees the principle gains as follows:

[I]t gives us information that we currently don't have, and therefore, it gives us greater insight into the operations of the global group. So, you know, for transparency measures, it gets a big tick. In terms of benefits, I think over time, you know, what we would be doing is seeing how this information would be embedded as part of our justified trust programme, so that we can actually provide that greater level of assurance. ....

[I]t would be expected that, you know, we would have more refined, better quality risk protection criteria, that allows us to, you know, more accurately identify risk and also more accurately risk-assess out certain entities, which I think ... is important. ...

[T]hose review processes have a cost associated with them, so, you know, if we can more confidently say, 'look, we've reviewed all the information, and we have no valid risk hypothesis to test, there's no need to go down that risk review path in terms of substantiating any information'. So, I think that's probably something which, you know, would be expected of a revenue authority to do with this information.

In NZ, the approach of IR is to have oversight of the entire process, through direct liaison with affected MNEs. The first reporting of CbCR data takes 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:<sup>25</sup>

- 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 entities resident in each jurisdiction, noting also the main business activity of each entity. Inland Revenue intends to contact the 19

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<sup>25</sup> A copy of IR's template is set out in Appendix 3.

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 MNEs to see where they are at in terms of being ready and meeting their CbCR requirements.

IR determined that it would approach the 19 NZ-headquartered MNEs directly, rather than through their agents (something which noted earlier has not been well received by the tax agents), with a number of MNEs appear to support. Consequently, IR 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 MNEs, such as with the annual questionnaire provided to MNEs regarding their cross border activities.

With such a small number of NZ-headquartered MNEs involved in CbCR IR 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 IR official, a number of key observations were made from IR'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. That's not to say that we haven't had, particularly the Big Four, ask us questions, obviously, I suppose, underlying that, they've got clients that have been, you know, asking them questions. So, they've had specific questions for us which we have then answered back to the Big Four, but our dealings essentially have been almost entirely with the corporates themselves on their, on their affairs, as opposed to going through an agent. ...

It's an interesting conundrum in some ways, because we do find, ah, generally speaking, particularly with transfer pricing, that dealing with the Big Four, the Big Four are a very good channel in terms of, of communicating, guidance, and we've, you know, found that to be very effective in terms of getting guidance, messaging out to, you know, the wider corporate base, but when I, what I'm talking about there, is the wider corporate base, so, that's, you know, maybe 900 corporate groups, whereas here [CbCR] we're looking at a very small number and they all have tax managers. ...

[A]nd generally speaking, we are told by these tax managers, that, "you deal with us first, we don't ... necessarily want you going to the Big Four and the Big Four then charging us money for a matter that we can deal with ourselves." And, and this is very much more an accounting matter, probably more so than tax.

Furthermore, IR has decided not to legislate for CbCR, observing:

"[W]e have not specifically legislated. So, we looked at our section 17 [TAA 1994] and thought, well, we have the ability now to require information of our ... corporates in relation to controlled companies off-shore and that should be sufficient to deal with this without necessarily having to go to the extra trouble of specific legislation and everything that that might entail, particularly given, you know, the programme of work that we have anyway for BEPS.

IR seems satisfied with its approach, given that it is one of the revenue authorities approved by the United States to exchange CbC reports:

So [the] US [is the] key player in all of this, [and is] really home to probably the great majority of CbC reporters. We definitely wanted to have an arrangement with the US for exchange, so, we went through, we were put through the hoops there with the US, in terms of, you know, obviously, they want to see if they're going to deal with us, they want to see a country that has the ability to actually supply them with CbC reports.

IR 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 this is expected to assist IR to assess whether there are any reasons to examine further the operations of any particular MNE. Where the greatest impact of CbCR is seen from IR'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 it's 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, and, obviously, you know, that, it's hoped anyway, whether it is or not is another matter and time will only tell, but, it's ... where CbC reporting is seen as a bit of a game-changer and that [a] corporate may not have stood out previously, may have had sufficient, well, you know, maybe it had, maybe left enough profit in various jurisdictions not to stand out, yet super profits have been, have been if you like, accumulated in a haven, without the necessary, you know, functions, assets and risks being associated with that haven entity, so that, you know, that's going to stand out and, and what's hoped is that actually, corporates will wake up to that, see the issue immediately and say "we need to do something about it, we need to restructure, we need to, you know, the game, the game if you like, has changed."

In terms of the confidentiality of exchanging information, IR 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. They're very comprehensive, we've gone through that, that experience ourselves, in fact we were quite ... taken with the depth that the global forum went into in terms of our own, the review of New Zealand, that it was very comprehensive. So, they, they have done quite an exercise in looking at systems and, and data safeguards in jurisdictions around the world, and that's where we get a lot of comfort and we certainly look at those reports to see that, that the countries that we are going to be exchanging with, have actually got the tick from the global forum and if they have got an action plan, that they, that they are actually working on that action plan and satisfy the global forum before we will exchange.

Going forward there is no intention from IR 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 AEOI. The most important document for CbCR for IR will be the IR1032 spreadsheet. IR appears to be taking a pragmatic approach, with MNE taxpayers encouraged to be upfront:

In filling out these CbC reports, they should see for themselves where, where potential weaknesses are, where other jurisdictions may well ask questions, and what we've said to them is "Look, front foot things, you know, if you believe you've got your transfer pricing right, that your policies are, are good, that they stand up, explain them, you know, don't muck around in terms of waiting for the inevitable. Actually put 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". So that's certainly been, been our approach, at least with our own, our own corporates.

Indeed, corporates considering for example the use of hybrids, that this is part of a behavioural change, "... our advice with hybrids, for example, is, 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, IR 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. Whereas we're taken a far more tailored approach, with looking at our corporate population. But, that said, we don't have quite the same issues that Australia has. Often, you know, New Zealand and Australia, well, we are put in the same pot, but we have quite different economies and, just even the point that I made earlier about, you know, Australia being a regional hub, that makes them quite different from a transfer pricing perspective than New Zealand, where, you know, we are certainly not any sort of hub.

Overall, it would appear that the approach of the Australian and NZ revenue authorities are at the 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 MNEs under CbCR. It would be fair also to add that IR is taking a much more 'relaxed' approach in the belief that it has a close handle on affected MNEs in NZ through its risk analysis, and that it can rely upon other jurisdictions to exchange information on foreign-headquartered MNEs that operate in NZ, many of which will be in Australia.

## **5. CONCLUSIONS, LIMITATIONS AND FUTURE RESEARCH**

To recap, our research questions is:

What are the current 'gaps' and how best to prepare the Australian and New Zealand Profession for Enhanced Tax Reporting Requirements under the BEPS Project?

Answering our research question, which we set out at the commencement of the paper, suggests a different response depending upon jurisdiction and whether the firm is a Big 4 CA firm or not.

Our Australian and New Zealand tax practitioner interviewees have been very 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 MNEs 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 MNEs and effectively cut advisers out of the process. MNEs have been left to contact their advisers where they saw the need for support. While IR 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 MNEs, made worse by the lack of consistent standards globally. One positive has been the consultative process the ATO 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 IR having a close relationship with all 19 NZ-headquartered MNEs, 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 ATO has worked directly with tax practitioners rather than with the affected MNEs. In contrast, Australian tax practitioners has 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 the large number of Australian-headquartered MNEs, the size of the task in Australia makes that of NZ pale into relative insignificance.

In choosing two jurisdictions where the approaches to CbCR at opposite ends of the spectrum (reflecting both legislative choice as well as reality), this has revealed insights that 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 over 100 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 LF 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 MNEs have approached this issues raised during the interviews in this study, and what further concerns have arisen from the perspective of tax practitioners and MNEs. Indeed, the interviews could be expanded to include the CbCR project manager(s) or their equivalent in a number of Australasian-headquartered MNEs.



## 6. APPENDICES

### Appendix 1: Human Ethics Approval



#### HUMAN ETHICS COMMITTEE

Secretary, Rebecca Robinson  
Telephone: +64 03 369 4588, Extn 94588  
Email: [human-ethics@canterbury.ac.nz](mailto:human-ethics@canterbury.ac.nz)

Ref: HEC 2017/10/LR-PS

10 April 2017

Adrian Sawyer  
Accounting and Information Systems  
UNIVERSITY OF CANTERBURY

Dear Adrian

Thank you for submitting your low risk application to the Human Ethics Committee for the research proposal titled "Preparing the Australian and New Zealand Profession for Enhanced Tax Reporting Requirements under the BEPS Project".

I am pleased to advise that this application has been reviewed and approved.

Please note that this approval is subject to the incorporation of the amendments you have provided in your email of 3<sup>rd</sup> April 2017.

With best wishes for your project.

Yours sincerely

*R. Robinson*  
pp.

Associate Professor Jane Maidment  
*Chair, Human Ethics Committee*

## Appendix 2: Interview Questions

### Tax Practitioner Interview Questions

#### Introduction

- Introduction
  - Purpose
  - Procedure
1. **Can you please provide a brief overview of your firm's general approach to CbCR?**
  
  2. **How many of your clients will be affected?**
    - As parent companies?
    - As subsidiaries?
    - How many clients may be able to eligible to apply for an exemption from the Commissioner from CbCR?
  
  3. **What do you see as the major challenges for your clients?**
    - Please outline the main compliance burdens/costs for clients in meeting CbCR requirements.
    - Please outline any specific data items which MNEs may have difficulty in obtaining/ascertaining, or may not have available.
    - Are there any information technology challenges relating to complying with CbCR requirements?
    - Do you anticipate increased revenue authority scrutiny of clients when they review CbC reports?
  
  4. **What are your views with respect to the confidentiality of information reported in CbC reports?**
    - Please discuss the availability of CbCR information to the public.
  
  5. **What steps have been taken, prior to CbCR commencing, to determine your clients' readiness?**
    - What actions have been taken to prepare for CbCR, e.g.
      - Have assessments of the availability/ ease of access of data from existing systems been made?
      - Have trial runs using CbCR data been undertaken?
      - Have assessments been made of how the client's tax arrangements will come across?
      - Have plans been developed to address any risks identified?
      - Others?

**6. What type of education and services may be necessary to assist clients?**

- What forms of education and guidance has been provided to make clients aware of CbCR requirements in general?
- Please discuss the adequacy of the CbCR information requirements/ guidelines provided by [the ATO/ IRD].
- What steps have been taken to make clients aware of the materiality thresholds for CbCR?
- What steps have been taken to make clients aware of the criteria for exemption from CbCR?
- What steps been taken to make clients aware of the penalties for failure to adhere to CbCR disclosure requirements/ failure to lodge?
- What are the main services offered to clients to assist them to comply with CbCR, e.g.
  - Tax compliance support, including completing and filing CbC forms/reports.
  - Tax planning for restructuring of operations to address potential exposure resulting from CbCR.
  - Assisting with the development of governance processes around transfer pricing implementation and policies and assuring consistency between the master file, local files and CbC report.
  - Facilitating selection and licensing of CbCR software.
  - Others?
- What changes will be required to existing IT systems?

**7. In what areas will changes need to be made?**

- What additional/ new data will be required to be collected by MNEs?
- Are additional personnel, and/or changes to personnel, required in implementing CbCR? If so, in what areas and/or roles?
- What additional resources are required in implementing CbCR?

**8. What benefits, if any, do you see from CbCR?**

- Please outline any efficiencies gained from CbCR, for your firm and for your clients.

**Conclude interview**

- What would be your three key takeaways for us?
- Do you have any other comments?

## **Revenue Authority Interview Questions**

### **Introduction**

- Introduction
- Purpose
- Procedure

#### **1. How prepared do you believe that MNEs (and their advisers) are for CbCR?**

#### **2. What do you see as the major challenges for MNEs in implementing and complying with CbCR requirements?**

- Please outline the main compliance burdens/costs for MNEs.
- In what areas will changes need to be made?
- Please discuss your view with respect to increased revenue authority scrutiny of MNEs relating to CbCR.

#### **3. What forms of assistance/education has [the ATO/ IRD] provided MNEs (and their advisers)?**

- Please discuss the adequacy of the information provided.

#### **4. What data collection issues are there?**

- Please outline any specific data items which MNEs may have difficulty in obtaining/ascertaining, or may not have available.
- Please discuss any issues with country variations in reporting requirements.

#### **5. Please outline any issues with respect to confidentiality of information reported in CbC reports.**

- Please discuss the availability of CbCR information to the public.

#### **6. Please outline any issues with regard to information exchange with other revenue authorities with respect to CbC reports.**

#### **7. What do you view as the benefits, if any, from CbCR?**

- Please outline any efficiencies gained from CbCR, for MNEs (and their advisers).
- Please outline any benefits of CbCR for the revenue authority.

### **Conclude interview**

- What would be your three key takeaways for us?
- Do you have any other comments?

### Appendix 3: Inland Revenue’s CbCR Template



#### COUNTRY-BY-COUNTRY REPORT

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

IR1032  
March 2017

Name of the MNE group:				Fiscal year concerned:				Reporting currency:		
Tax Jurisdiction	Revenues		Total	Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party								

Name of the MNE group:						Fiscal year concerned:										
Revenues						Main business activity(ies)										
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Research and Development	Holding/managing Intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other*	

\* Please specify the nature of the activity of the Constituent Entity in Table 3.



**Name of the MNE group:**

**Fiscal year concerned:**

Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report.

A large, empty rectangular box with a light gray border, intended for providing additional information or explanations related to the MNE group and fiscal year.

