

KEY FINANCIAL SECRECY INDICATORS

Key Financial Secrecy Indicator 6: Country-by-Country Reporting

What is being measured?

KFSI 6 measures whether the companies listed on the stock exchanges or incorporated in a given jurisdiction are required to publish worldwide financial reporting data on a country-by-country reporting (CBCR) basis, and if the data is accessible to the public. A full credit is awarded when [country-by-country reporting](#)¹ is required by all companies (which is not yet the case). A 25% credit is awarded if a country requires limited, but periodic worldwide country-by-country reporting for specific economic sectors, namely banking or extractive industries.

In principle, any jurisdiction could require all companies incorporated under its laws (including subsidiaries and holding companies) to publish in their accounts financial information on their global activity on a country-by-country basis. In practice, however, no jurisdiction does this today. Appropriate reporting requirements can be implemented either through regulations issued by the stock exchange or by a legal or regulatory provision enacted by the competent regulatory or legislative body.

Country-by-country reporting for financial institutions was adopted by EU member states in 2015². The EU-CBCR rules for banks include annual disclosure of turnover, number of employees, profit or loss before tax, tax on profit or loss, and public subsidies received. On this ground, a quarter of a transparency credit (0.25 credits) has been awarded to all EU member states.

Another set of (far narrower) CBCR rules applying to the extractives industries has become law in the USA³, and similar rules were passed for EU member states, too⁴. The annual financial information to be published in both cases is limited to data required under the principles elaborated by the [Extractive Industries Transparency Initiative \(EITI\)](#)⁵. These principles prescribe that all “material payments” to governments made by companies active in the extractive sector must be published.

A quarter of a transparency credit (0.25 credits) has been awarded to EU member states, but none to the USA. This is because the implementation of the law in the USA has been delayed. Section 1504 of the Dodd Frank Act requires the US Securities and Exchange Commission (SEC) to issue rules mandating the disclosure of payments. These rules issued by the SEC were successfully challenged by the American Petroleum Institute at the U.S. District Court that finally vacated the rules. The SEC has decided not to appeal against this decision and instead has been working on redrafting Section 1504 rules in light of the court's decision⁶. Given that these rules have yet to be reissued by the SEC as of 21 June 2015 and are unlikely to be issued

before 2016, CBCR is currently not implemented in the USA and its future application appears uncertain.

Following the Dodd- Frank rules in the USA and the EU rules for extractive industries, Norway has regulated CBCR for enterprises in the extractive industry and in logging of non-planted forestry⁷, effective as of 1st January 2014. The scope of the Norwegian rules is wider than the similar rules in the EU and the USA with regard to the elements that are required to be disclosed (e.g. sales income, production volume, acquisitions of goods and services, and number of employees in every subsidiary). However, Norwegian companies are not required to report the data for their activities in countries where they only have “supportive functions”⁸, which allows them in practice not to report on their activities in tax havens. While as of 21 June 2015, the Norwegian parliament has decided the government should review the current CBCR regulations⁹, no implementation date has been set for the Parliament's decision, and therefore we consider the current exemption for 'supportive functions' to be too material to award Norway a quarter transparency credit.

On 16th December, 2014, Canada legislated the Extractive Sector Transparency Measures Act, which entered into force on 1st June 2015. According to the new law, extractive companies that engage in the commercial development of oil, gas or minerals will be required to report - on a project basis - on payments including taxes, royalties and fees to all levels of government in Canada and abroad. The reports will be available to the public, with the first reports to be submitted in November 2016¹⁰.

In our assessment it is not sufficient for a country merely to oblige or allow extractive companies operating on their territory to publish payments to this country's government agencies. Instead, for a quarter transparency credit, a country must require either all companies incorporated in its territory or those listed on a stock exchange to disclose payments made worldwide in countries with extractive operations (including by its subsidiaries), and not merely in the same country.

Compared to full CBCR and compared to the European rules on CBCR in the banking sector, the EITI principles are also far narrower in geographical scope because they require disclosure of payments only with respect to countries where the corporation actually has extractive operations. Payments to other country governments, for example where holding, financing or intellectual property management subsidiaries of the same transnational group are located, are not required to be reported. This limits the data's usefulness for tackling corporate profit shifting. The rule's value for resource rich (developing) countries however is substantial.

An even weaker requirement applies in Hong Kong. The requirement to disclose details about “payments made to host country governments in respect of tax, royalties and other significant payments on a country by country basis”¹¹ is only triggered either at the time of the extractive company's initial listing on the stock exchange or on the occasion of the company issuing fresh shares. It remains unclear how the provisions to disclose “significant payments” on a “country-

by-country basis” will ultimately be interpreted and implemented. Because one-off disclosure is better than no disclosure, but nonetheless unlikely to deter bribery or tax evasion, we only award 0.1 credits in this circumstance.

The main data¹² sources we used for this indicator were the TJN-Survey 2015, original sources from the EU, Norway, USA and Hong Kong and interviews and/or email-exchanges with various experts from, among others, www.revenuewatch.org, www.eiti.org, www.publishwhatyoupay.org and <http://www.foei.org/en>.

Table 1: KFSI 6 - Country-by-Country Reporting - Construction		
Conditions	Assessment	Sources
(1) Some one-off country-by-country reporting required for corporations active in the extractive industries (EITI equivalent, at least for those listed)	(1) = 0.1 credit points	<ul style="list-style-type: none"> • TJN Survey 2015 • www.eiti.org • www.revenuewatch.org • www.publishwhatyoupay.org • http://www.foei.org/en
(2) Some annual country-by-country reporting required for corporations active in the extractive industries (EITI equivalent, at least for those listed) or banking	(2) = 0.25 credit points for each sector covered	
(3) Full annual country-by-country reporting required for corporations of all sectors (at least for those listed)	(3) = 1 credit point	

Why is this important?

TJN's proposal for [CBCR](#)¹³ requires transnational corporations of all sectors, listed and non-listed, to disclose key information in their annual financial statements for each country in which they operate. This information would comprise its financial performance, including:

- a) Sales, split by intra-group and third party
- b) Purchases, split the same way
- c) Financing costs, split the same way
- d) Pre-tax profit
- e) Labour costs and number of employees.

In addition, the cost and net book value of its physical fixed assets, the gross and net assets, the tax charge, actual tax payments, tax liabilities and deferred tax liabilities would be published on a country-by-country basis.

Current reporting requirements are so opaque that it is almost impossible to find even such basic information as which countries a corporation is operating in. It is even more difficult to discover *what* transnational companies are doing in particular countries, and how much they are effectively paying in tax in any given country. The consequence is that corporations can minimise their global tax rates without being successfully challenged anywhere¹⁴. Large scale shifting of profits to low tax jurisdictions and of costs to high tax countries ensues from this lack of transparency.

The means used for profit shifting are primarily based on transfer mispricing, internal financing or reinsurance operations, or artificial relocation and licensing of intellectual property rights. These transactions take place within a transnational corporation, i.e. between different parts of a related group of companies. Today's financial reporting standards allow such intra-group transactions to be consolidated with the normal third-party trade in the annual financial statements. Therefore, a corporation's international tax and financing affairs are effectively hidden from view.

As a consequence, tax authorities do not know where to start looking for suspicious activity, and civil society does not have access to reliable information about a company's tax compliance record in a given country in order to question the company's policies on tax and corporate social responsibility and make enlightened consumer choices.

Making this information available on public record would significantly enhance the financial transparency of transnational corporations. Investors, trading partners, tax authorities, financial regulators, civil society organisations, and consumers would be able to make better informed decisions on the basis of this information. Investors, for instance, could evaluate if a

given corporation piles up huge tax liabilities or is heavily engaged in conflict-ridden countries. Tax authorities could make a risk assessment of particular sectors or companies to guide their audit activity by comparing profit levels or tax payments to sales, assets and labour employed. The recent cases of LuxLeaks¹⁵ showed that it may not be enough in all circumstances for tax administrations to have access on such data, since tax administrations may be entering into special and tailored tax arrangements with corporations. Public scrutiny of CBCR instead will ensure a deterrent effect by disclosing the extent of profit shifting and potential associated political interference in tax administrations.

While much narrower in scope, the Extractive Industries Transparency Initiative (EITI) has succeeded in raising awareness of the importance of transparency of payments made by companies to governments. If a country voluntarily commits to the EITI, it is required after a transitional period to annually publish details on the activities of extractive companies active in the country. These details include all the payments the government received by companies active in this sector. EITI also requires the companies to publish this information so that discrepancies from both reporting parties can be questioned by civil society. Mismatches can be indicative of illicit activity such as bribery or embezzlement.

The information provided under the EITI requirements is of particular interest because it may reveal for the first time in a given country information on tax payments made by companies to governments. It may help trigger further questions which could result in greater transparency, such as full country-by-country reporting. Without such information, electorates, civil society and consumers cannot make informed choices and bribe paying is more easily hidden.

Recent developments

As part of the Base Erosion and Profit Shifting project, in February 2015 the OECD published their Guidance on Transfer Pricing Documentation and Country-by-Country Reporting ([Action 13: 2014 Deliverable](#)).¹⁶ This new OECD CBCR "requires multinational enterprises (MNEs) to report annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their total employment, capital, retained earnings and tangible assets in each tax jurisdiction."¹⁷ However, these requirements would not entail publication of any data and they are only applicable for MNEs with an annual consolidated group revenue of at least 750 million Euro.¹⁸ On 8th June 2015, the OECD published suggested mechanisms for the sharing of CBCR data.¹⁹ According to the implementation package, the CBCR data will be provided by the MNE to its parent jurisdiction which will then share it with the other relevant countries by three optional exchange of information mechanisms: 1) Multilateral Convention on Administrative Assistance in Tax Matters (M-CAA); 2) bilateral treaties; 3) Tax Information Exchange Agreements (TIEAs). While some solutions are suggested in cases where none of these mechanisms are in place, it is not clear how developing countries can effectively receive and

implement the CBCR data.²⁰ Furthermore, countries which are intending to use the data to adjust the declared profits risk being excluded from receiving any reports in the future.²¹

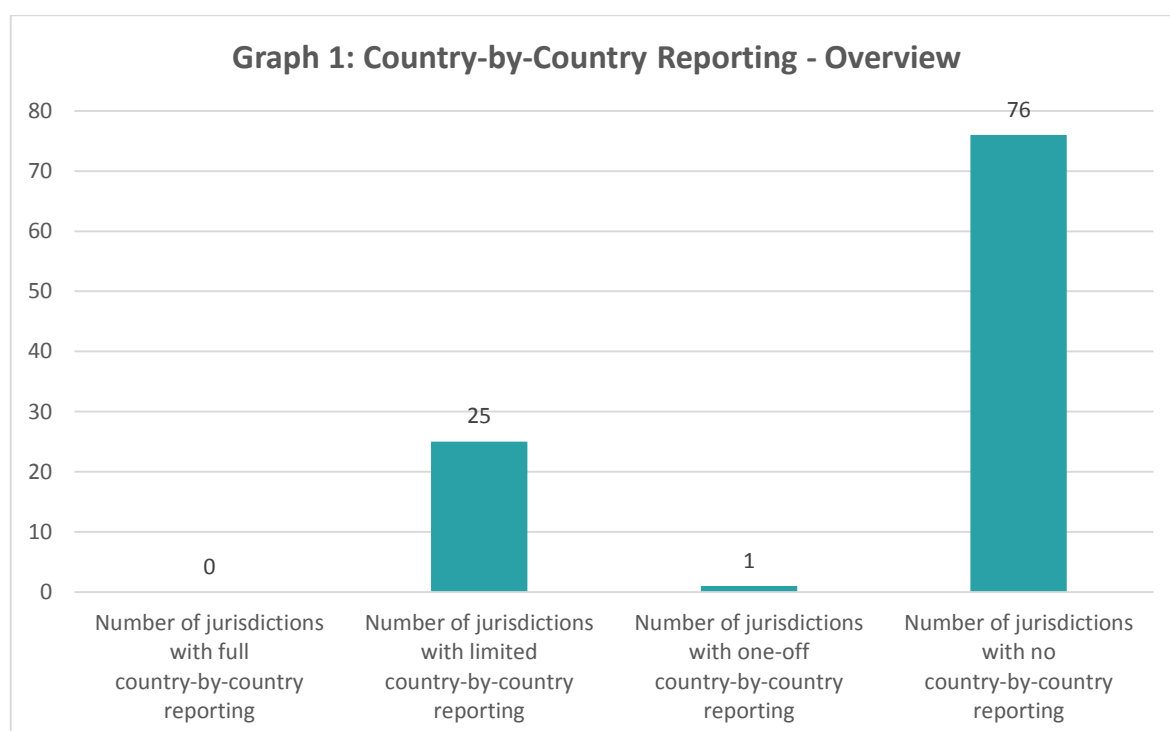
Another important relevant initiative with respect to CBCR is the revision of the Shareholders Rights Directive ([Directive 2007/36/EC](#)²²). In April 2014 the European Commission presented a proposal for the revision of the Shareholders Rights Directive, which would extend existing CBCR obligation for banks (CRD IV) to transnational enterprises in all sectors.²³ The suggested proposal would require companies under certain criteria to report on an annual and consolidated basis the following items: 1) names and nature of their activities; 2) turnover; 3) profit or loss before tax; 4) tax on profit or loss; 5) number of employees; 6) public subsidies. In the European Parliament's plenary vote on 8 July 2015, these provisions were favoured by 404 members of parliament, whilst 127 voted against.²⁴ Before these provisions and the directive will become legally binding, however, the EU-commission and EU-member governments will need to complete the Trilogue-negotiations.

What crimes might be hidden behind the absence of country by country reporting?

Tax evasion by transnational corporations through profit shifting (transfer mispricing), payments of bribes, market manipulation through oligopolies, and more besides might hide behind the opacity that a lack of country-by-country reporting obligations provides.

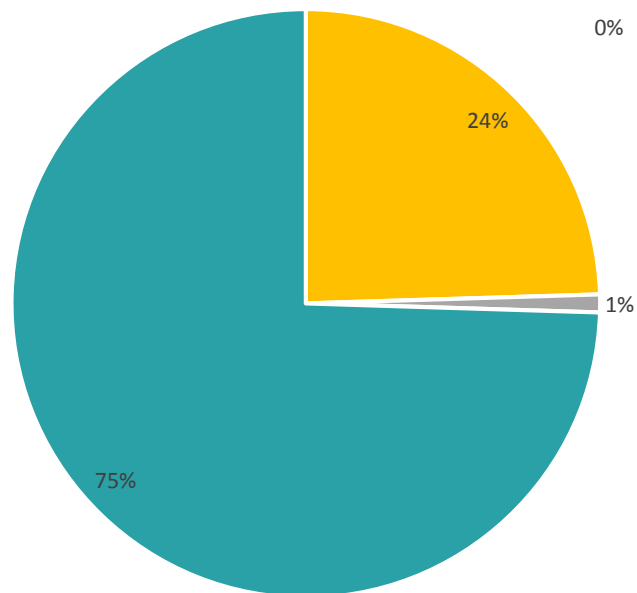
Results Overview

Table 1: Country-by-Country Reporting – Overview	
Number of jurisdictions with full country-by-country reporting	0
Number of jurisdictions with limited country-by-country reporting	25
Number of jurisdictions with one-off country-by-country reporting	1
Number of jurisdictions with no country-by-country reporting	76



Results Detail

Graph 2: Country-by-Country Reporting - Details



- Number of jurisdictions with full country-by-country reporting: No jurisdiction
- Number of jurisdictions with limited country-by-country reporting: AT, BE, CA, CY, CZ, DK, EE, FI, FR, DE, GR, HU, IE, IT, LV, LU, MT, NL, PL, PT, SK, SI, ES, SE, GB
- Number of jurisdictions with one-off country-by-country reporting: HK
- Number of jurisdictions with no country-by-country reporting: All other jurisdictions

Table 2: Country-by-Country Reporting – Details by Sector			
Country	ISO	Financial Institutions	Extractive Industries
Austria	AT	X	X
Belgium	BE	X	X
Canada	CA		X
Cyprus	CY	X	X
Czech Republic	CZ	X	X
Denmark	DK	X	X
Estonia	EE	X	X
Finland	FI	X	X
France	FR	X	X
Germany	DE	X	X
Greece	GR	X	X
Hong Kong	HK		X
Hungary	HU	X	X
Ireland	IE	X	X
Italy	IT	X	X
Latvia	LV	X	X
Luxembourg	LU	X	X
Malta	MT	X	X
Netherlands	NL	X	X
Poland	PL	X	X
Portugal	PT	X	X
Slovakia	SK	X	X
Slovenia	SI	X	X
Spain	ES	X	X
Sweden	SE	X	X
UK	GB	X	X

KFSI 6: COUNTRY-BY-COUNTRY REPORTING

Table 3: Country-by-Country Reporting - Transparency Credits

ID	Country	ISO	Credits	ID	Country	ISO	Credits
1	Andorra	AD	0	52	Latvia	LV	0.5
2	Anguilla	AI	0	53	Lebanon	LB	0
3	Antigua & Barbuda	AG	0	54	Liberia	LR	0
4	Aruba	AW	0	55	Liechtenstein	LI	0
5	Australia	AU	0	56	Luxembourg	LU	0.5
6	Austria	AT	0.5	57	Macao	MO	0
7	Bahamas	BS	0	58	Macedonia	MK	0
8	Bahrain	BH	0	59	Malaysia (Labuan)	MY	0
9	Barbados	BB	0	60	Maldives	MV	0
10	Belgium	BE	0.5	61	Malta	MT	0.5
11	Belize	BZ	0	62	Marshall Islands	MH	0
12	Bermuda	BM	0	63	Mauritius	MU	0
13	Bolivia	BO	0	64	Mexico	MX	0
14	Botswana	BW	0	65	Monaco	MC	0
15	Brazil	BR	0	66	Montenegro	ME	0
16	British Virgin Islands	VG	0	67	Montserrat	MS	0
17	Brunei	BN	0	68	Nauru	NR	0
18	Canada	CA	0.25	69	Netherlands	NL	0.5
19	Cayman Islands	KY	0	70	New Zealand	NZ	0
20	Chile	CL	0	71	Norway	NO	0
21	China	CN	0	72	Panama	PA	0
22	Cook Islands	CK	0	73	Paraguay	PY	0
23	Costa Rica	CR	0	74	Philippines	PH	0
24	Curacao	CW	0	75	Poland	PL	0.5
25	Cyprus	CY	0.5	76	Portugal (Madeira)	PT	0.5
26	Czech Republic	CZ	0.5	77	Russia	RU	0
27	Denmark	DK	0.5	78	Samoa	WS	0
28	Dominica	DM	0	79	San Marino	SM	0
29	Dominican Republic	DO	0	80	Saudi Arabia	SA	0
30	Estonia	EE	0.5	81	Seychelles	SC	0
31	Finland	FI	0.5	82	Singapore	SG	0
32	France	FR	0.5	83	Slovakia	SK	0.5
33	Gambia	GM	0	84	Slovenia	SI	0.5
34	Germany	DE	0.5	85	South Africa	ZA	0
35	Ghana	GH	0	86	Spain	ES	0.5
36	Gibraltar	GI	0	87	St Kitts and Nevis	KN	0
37	Greece	GR	0.5	88	St Lucia	LC	0
38	Grenada	GD	0	89	St Vincent & Grenadines	VC	0
39	Guatemala	GT	0	90	Sweden	SE	0.5
40	Guernsey	GG	0	91	Switzerland	CH	0
41	Hong Kong	HK	0.1	92	Taiwan	TW	0
42	Hungary	HU	0.5	93	Tanzania	TZ	0
43	Iceland	IS	0	94	Turkey	TR	0
44	India	IN	0	95	Turks & Caicos Islands	TC	0
45	Ireland	IE	0.5	96	United Arab Emirates (Dubai)	AE	0
46	Isle of Man	IM	0	97	United Kingdom	GB	0.5
47	Israel	IL	0	98	Uruguay	UY	0
48	Italy	IT	0.5	99	US Virgin Islands	VI	0
49	Japan	JP	0	100	USA	US	0
50	Jersey	JE	0	101	Vanuatu	VU	0
51	Korea	KR	0	102	Venezuela	VE	0

¹ <http://www.taxresearch.org.uk/Documents/CBC2012.pdf>; 9.6.2015.

² The EU Capital Requirements Directive IV (CRD IV) required disclosure according to Article 89, here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0338:0436:EN:PDF>; 10.6.2015. The only main item missing for full CBCR is capital assets. According to Article 89(1), the EU-commission had to carry out an impact assessment of the envisaged publication of the data, and the EU-commission was empowered to defer or modify the disclosure through a so-called “delegated act” in case it identified “significant negative effects” consequences (Art. 89 (3)). In October 2014 the EU-commission has adopted a report containing this assessment of the economic consequences of CBCR by banks and investment firms under CRD IV. The EU- Commission adopted the report's conclusion according to which: "the reporting obligation under CRD IV are not expected to have a significant negative economic impact, including on competitiveness, investment, credit availability or the stability of the financial system". For the press release see: http://europa.eu/rapid/press-release_IP-14-1229_en.htm; 5.8.2015.

³ See Section 1504 in the “Dodd-Frank Wall Street Reform and Consumer Protection Act”, in: <https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>; 10.6.2015.

⁴ The scope of the European rules is broader than the US rules, for example by extending the requirements to loggers of primary forests. According to the European Directive, member states "shall require large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments on an annual basis." (Article 42, 2013/34/EU Directive). Member states have time until July 2015 to issue enforcing rules of the Directive, and reporting must begin for financial years commencing on or after 1.1.2016 (Article 53, 2013/34/EU Directive). For the full text of the Directive see here: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN>; 10.6.2015..

⁵ The EITI criteria require the “regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner”, in: <http://eiti.org/eiti/principles> 15.07.2013.

⁶ For a summary of the legal development regarding Section 1504 of Dodd-Frank Act see the report of the Congressional Research Service, published in 2.4.2015 at: <http://fas.org/sgp/crs/misc/R43639.pdf>; 10/6/2015.

⁷ The regulations can be viewed here: <https://www.regjeringen.no/nb/dokumenter/forskrift-om-land-for-land-rapportering/id748525/>; <https://www.regjeringen.no/no/dokumenter/prop-1-ls-20132014/id740943/?q=land-for-land&ch=3>; 21.6.2015. The announcement of the Norwegian Ministry of Finance can be view here: <https://www.regjeringen.no/nb/aktuelt/forskrift-om-land-for-land-rapportering/id748537/>; 21.6.2015.

⁸ While the definition for the term 'Supportive functions' is missing in the Norwegian regulations, it is explained in the remarks for the Finance Committee's proposal, available here: <https://www.stortinget.no/nn/Saker-og-publikasjoner/Publikasjoner/Innstillingar/Stortinget/2013-2014/inns-201314-004/30/#a1>; 21.6.2015.

⁹ <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Lose-forslag/?p=61783>; 21.6.2015

¹⁰ See http://www.publishwhatyoupay.org/wp-content/uploads/2015/04/Factsheet_for_Canadian_mandatory_reporting_legislation.pdf; Communication with PWYP International and Global Witness of 1.7.2015; Communication with PWYP Canada of 6.7.2015.

¹¹ See chapter 18.05(6)(c), in: http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_18.pdf; 10.6.2015. Neither the "Continuing Obligations" section in the same chapter (applicable to extractive companies) nor other HKSE regulations require disclosure of such payments (e.g. general disclosure regulations of financial information for all listed companies): http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/appendix_16.pdf; 10.6.2015.

¹² To see the sources we are using for particular jurisdictions please check out the corresponding information in our database, available at www.financialsecrecyindex.com/database/menu.xml.

¹³ <http://www.taxresearch.org.uk/Documents/CBC2012.pdf>; 10.6.2015.

¹⁴ For instance: <http://www.reuters.com/article/2012/10/15/us-britain-starbucks-tax-idUSBRE89E0EX20121015>; 10.6.2015 and <http://www.reuters.com/article/2012/12/06/us-tax-amazon-idUSBRE8B50AR20121206>; 10.6.2015; and <http://www.bloomberg.com/news/2010-10-21/google-2-4-rate-shows-how-60-billion-u-s-revenue-lost-to-tax-loopoles.html>; 10.6.2015.

¹⁵ The relevant articles are available at: <http://www.icij.org/project/luxembourg-leaks>; 10.6.2015.

¹⁶ For the full report see: www.oecd-ilibrary.org/guidance-on-transfer-pricing-documentation-and-country-by-country-reporting_5jz122nl1vxw.pdf;jsessionid=andfh9d0ag7gb.x-oecd-live-03?contentType=%2fns%2fOECDBook%2c%2fns%2fBook&itemId=%2fcontent%2fbook%2f9789264219236-en&mimeType=application%2fpdf&containerItemId=%2fcontent%2fserial%2f23132612&accessItemId=s; 10.6.2015.

¹⁷ See p.9 in the report above. For more information see also: <http://www.taxresearch.org.uk/Blog/2014/09/16/the-era-of-country-by-country-reporting-is-arriving/>; 10.6.2015.

¹⁸ <http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf>; 15.6.2015.

¹⁹ See in: <http://www.oecd.org/tax/transfer-pricing/oecd-releases-implementation-package-for-beps-country-by-country-reporting.htm>; 10.6.2015.

²⁰ See p. 5 here: <http://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf>; 10.6.2015,

²¹ <http://www.taxresearch.org.uk/Blog/2015/02/06/the-oecd-attaches-almost-impossible-conditions-to-country-by-country-reporting/>; 5.8.2015.

²² For the Directive text see here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF>; 10.6.2015.

²³ For a more extended explanation on the planned revision see: http://ec.europa.eu/internal_market/company/shareholders/indexa_en.htm; 10.6.2015.

²⁴ Email by Koen Roovers/FTC of 8 July 2015. For a version of the proposal as of 10th June 2015 see: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%2bA8-2015-0158%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>; 10.6.2015.