Good corporate tax citizenship – the example of financial institutions

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A balancing act between transparency and social responsibility

- Full tax disclosure is an obligation for financial institutions in countries around the world in order to be allowed to operate.

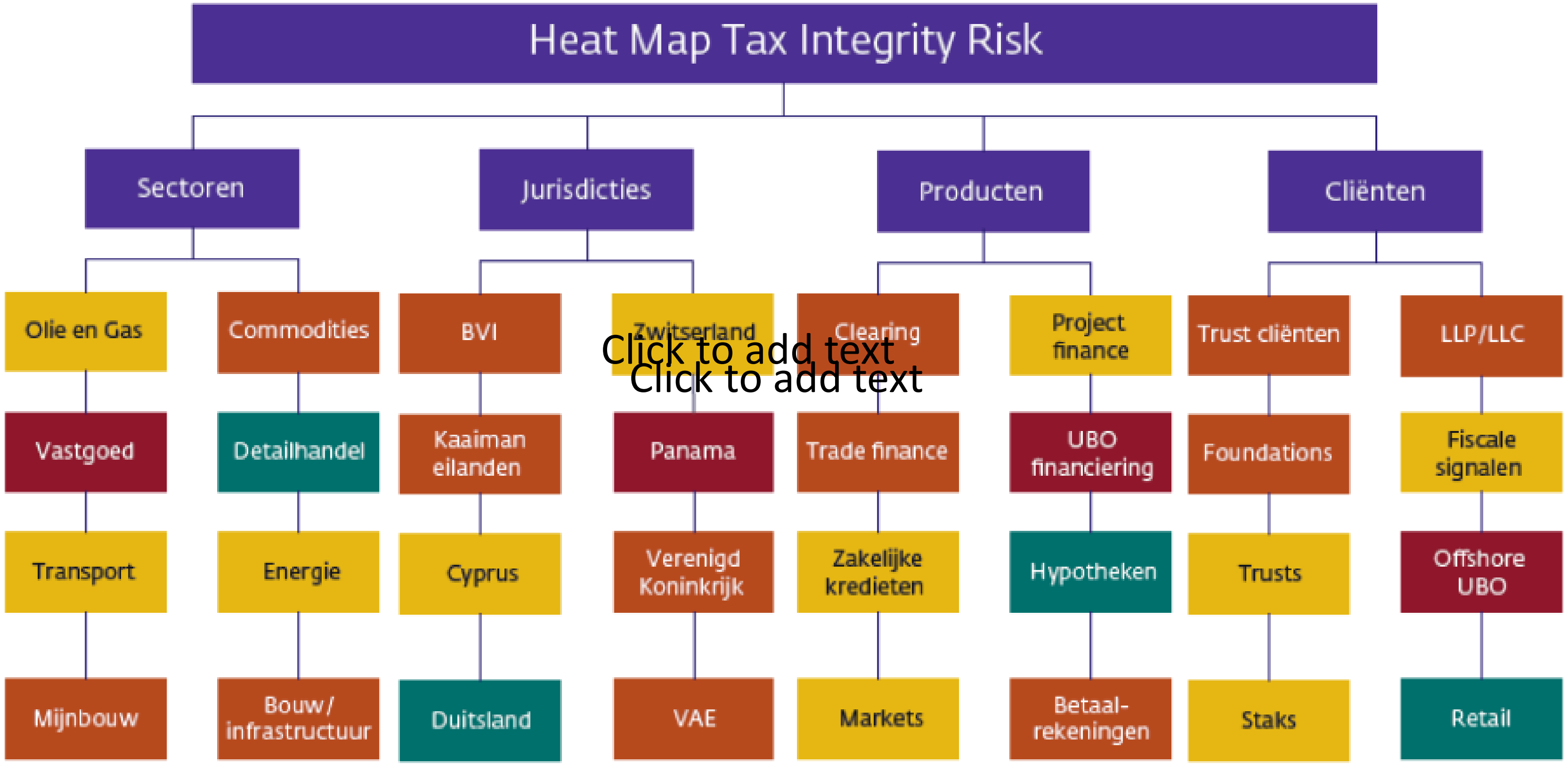
- Financial institutions are ahead of the curve in terms of transparency and social responsibility, as they are being heavily regulated.

- All banks operating in New Zealand are required by law to disclose their financial condition in a bank disclosure statement.
    - A bank must make its disclosure statement readily accessible on its website;
    - Some of the more important information included in the bank disclosure statement: Credit Rating, Profitability and Total Assets, Capital Adequacy, Impaired Assets, Exposure Concentration, Connected Lending

- In Singapore the Banking (Publication and Provision of Accounts) Regulations set out the requirement for all banks to publish their annual balance-sheet, profit and loss account and certain information in local daily newspapers or banks' internet website, and make available the information to any person upon the person's request.

- Since 2015, banks in the EU have had to publish a stringent sectoral country-by-country report pursuant to Article 89 of the Capital Requirements Directive. This includes country-by-country information on the names, nature of activities and geographical location, turnover, number of employees on a full-time-equivalent basis, profit or loss before tax, tax on profit or loss and public subsidies received.

How regulators look at the tax integrity risk analysis banks run on tax related issues



Source: https://www.toezicht.dnb.nl/binaries/50-237752.pdf

What is the difference between an undisclosed CbCR and public CbCR?

		Action 13 BEPS Country by Country reporting	Public Country by Country Reporting (EU Proposal)	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504
Basic information	Entity name	✔		✔		
	Activities	✔	✔	✔		
	Geographical location/Tax jurisdiction	✔		✔	✔	✔
	Project name				✔	✔
	Receiving government				✔	✔
Financial data	Revenue	✔	✔	✔		
	Profit or loss before tax	✔	✔	✔		
	Tangible assets other than cash or cash equivalents	✔				
	Stated capital	✔				
	Accumulated earnings	✔	✔			
Tax data	Income taxes paid	✔	✔	✔	✔	✔
	Income tax charge	✔	✔			
Other data	Public subsidies received			✔		
	Dividends				✔	✔
	Royalties				✔	✔
	License fees, rental fees, entry fees				✔	✔
	Signature, discovery and production bonuses				✔	✔
	Production entitlements				✔	✔
	Payments for infrastructure improvements				✔	✔
People data	Number of employees	✔	✔	✔		

Source: KPMG, CbCR, 15 April 2016, https://assets.kpmg/content/dam/kpmg/pdf/2016/07/cbcr-kpmg-cbcr-overview-and-comparison-of-initiatives-15042016.pdf

Who gets impacted?

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	UK Country by Country reporting	Public Country by Country Reporting (EU Proposal)	Capital Requirements Directive IV	The EU Accounting Directive: Chapter 10	The Dodd Frank Act: Section 1504
Who is affected	Multinational Enterprises (MNEs) with a consolidated group revenue in excess of €750 million and either a: — UK tax resident ultimate parent; or — UK headed sub-group with UK taxable presence, but ultimate parent is not UK tax resident and certain criteria apply.	Multinational Enterprises (MNEs) with a consolidated group revenue in excess of €750 million which are either EU-parented or have EU subsidiaries or branches.	CRD IV applies country by country reporting to 'institutions' in the EU. Institutions are defined as credit institutions and investment firms.	Large undertakings and public interest entities incorporated in the EU, active in exploration, prospection, development and extraction of minerals or oil and gas, or logging of primary forests. In addition, it will apply to many foreign-resident groups that are listed on an EU stock exchange under the FCA's Disclosure and Transparency Rules.	SEC registered companies engaged in the commercial development of oil, natural gas, or minerals.

Source: KPMG, CbCR, 15 April 2016, https://assets.kpmg/content/dam/kpmg/pdf/2016/07/cbcr-kpmg-cbcr-overview-and-comparison-of-initiatives-15042016.pdf

The interplay with the negotiations on the Shareholder Rights Directive

- On 8 July 2015, in the framework of negotiations on the Shareholder Rights Directive, the European Parliament proposed amendments to the Accounting Directive with a view to introducing public country-by-country reporting.

- This amendment sought to extend to all industry sectors the existing country-by-country reporting which banks started to publish in 2015.

Source: Introducing public country-by-country reporting for multinational enterprises - Questions & Answers, https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_16_1351

Real effects of public CbCR and the firm structure of European banks

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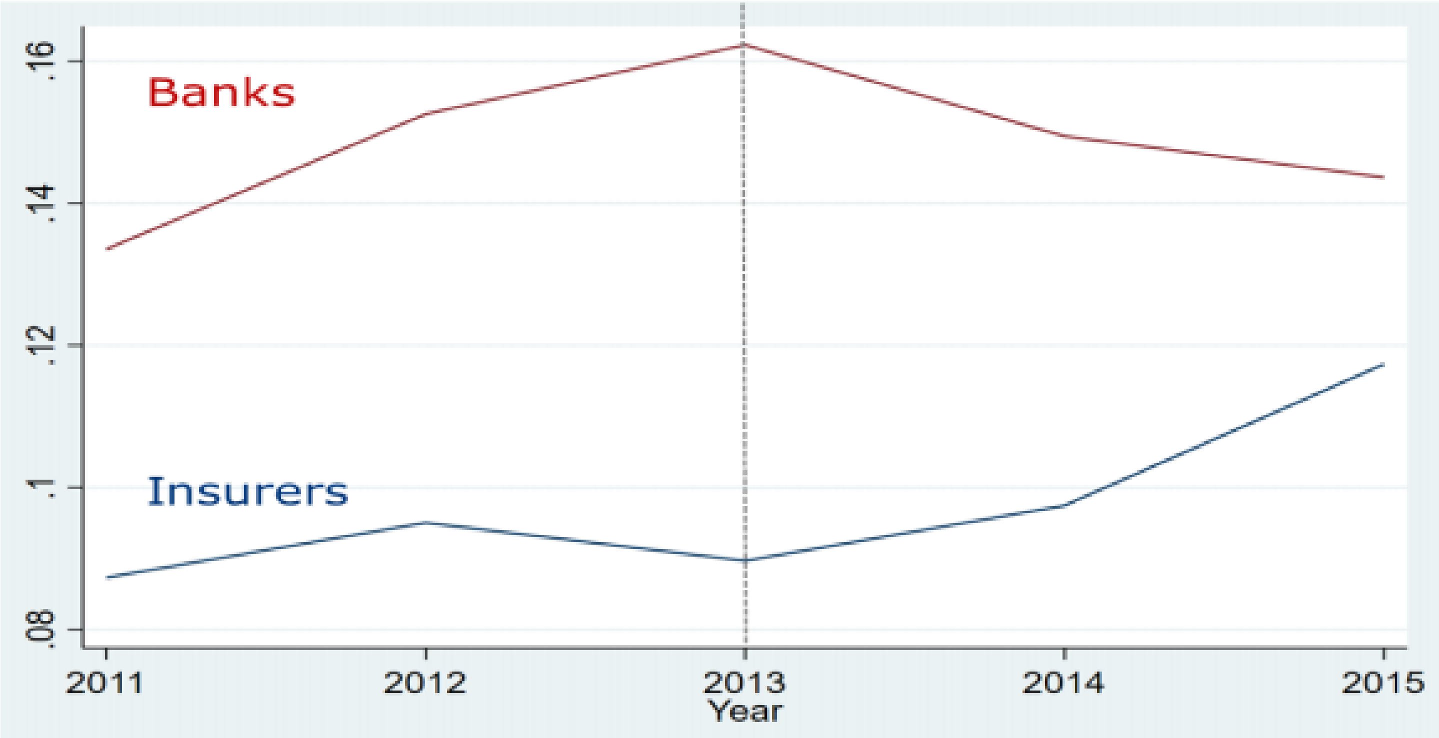
- Tax havens presence has decreased

- Reputational cost
- Tax audit scrutiny
- Regulatory scrutiny

3 impacts



This figure illustrates the development of tax haven presence for banks and insurers over time. We plot the average share of tax haven entities ($\frac{tax\ haven\ entities}{total\ entities}$) on an annual basis.

Source: WU International Taxation Research Paper Series, March 2020, *Real Effects of Public Country-by-Country Reporting and the Firm Structure of European Banks*

Barclays CbCR

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Country Snapshot 2019

		Audited	Audited	Unaudited	Audited	Unaudited	Unaudited	Unaudited	Unaudited	Audited	Audited
Country*	Commentary	Turnover £m	Profit/ (loss) before tax £m	Total tax paid/ (refunded) £m	Corporation tax paid/ (refunded) £m	Social Security paid £m	VAT paid £m	Bank levy paid £m	Other taxes paid £m	Public subsidies received £m	Average number of employees
 United Kingdom	We are one of the largest banks in the UK, with operations spanning all business lines. We have been consistently ranked as one of the top four largest UK taxpayers in the last six years. Various factors mean that the profit we report as being earned in the UK differs from the profits on which we are subject to UK corporation tax. In particular, being a UK-headquartered bank, the profit figure includes dividends received from overseas subsidiaries, which are not taxed in the UK as they have already been taxed in the jurisdiction in which those profits were earned. In 2019, we paid no UK corporation tax. This reflected contributions of £1,231m made to our main UK pension fund and the offset of tax losses brought forward from prior years, as well as overpayments in respect of a number of prior years. In the UK, a contribution to a company pension fund attracts tax relief when the payment is made and, when large contributions are made, this can cause taxable profits to vary significantly from one period to another. The bank levy we paid in 2019 was also reduced as a result of taking into account overpayments made in prior years.	13,717	1,367	1,305	–	412	605	218	70	–	48,241

Source: www.home.Barclays, https://home.barclays/content/dam/home-barclays/documents/investor-relations/reports-and-events/annual-reports/2019/Barclays%20PLC%20Country%20Snapshot%202019.pdf

A balancing act between transparency and social responsibility

- Corporates are not yet subject to the same disclosure obligation as financial institutions. Nevertheless, there are companies such as Rio Tinto that have chosen to report more than they are legally required to.

- They have been pioneering a tax transparency approach for over 10 years. Examples of tax reporting that can be found on the company's website:

Europe

Our global headquarters are in London, and we pay tax in ten European countries: Belgium, France, Germany, Iceland, Luxembourg, Netherlands, Serbia, Spain, Switzerland, and UK.

$160M
Total Taxes & Royalties Paid in Europe

$98M
Corporate Income Tax Paid in Europe

$40M
Employer Payroll Tax Paid in Europe

$55M
Taxes Collected on Behalf of Employees & Remitted to European Governments

Australia

Of the $7.6 billion Rio Tinto paid in taxes and royalties during 2019, $6.2 billion was paid in Australia. Australia is home to around half of our global assets, including Gudai-Darri (Koodaideri) – our new $2.6 billion iron ore mine – and Winu, our promising copper-gold exploration project. At our iron ore assets in the Pilbara, projects worth a combined value of $4.6 billion are underway. And we continue to invest in the country including with our partners. In 2019, we awarded our 400th scope of work through our local procurement portal, and partnered with over 1900 Western Australian businesses – including Pilbara Aboriginal businesses.

$6.2B
Total Taxes & Royalties Paid in Australia

$1.7B
Royalties Paid in Australia

$4.2B
Corporate Income Tax Paid in Australia

$619M
Taxes Collected on Behalf of Employees & Remitted to Australian Governments

Example of Rio Tinto and BHP style of communication

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BHP

- In a public hearing of the Senate inquiry into Corporate Tax Avoidance in Melbourne on 10 April 2015, both BHP Billiton and Rio Tinto disclosed that they were being audited by the ATO.

- BHP's corporate affairs boss Tony Cudmore and group tax head Jane Michie refused to reveal if BHP had received a claim to pay back taxes for alleged tax avoidance through Singapore, or how much revenue was transferred to Singapore from Australia or how much tax was paid in Singapore.

- The corporate affairs president of BHP Billiton cited commercial sensitivity for not revealing figures for its Singapore operations, but its own sustainability report states that the amount was $26 million in 2014.

- The head of group tax for BHP Billiton also refused to answer repeated questions from Greens senators on whether there was a position paper from the ATO setting out how much tax is owed.

Example of Rio Tinto and BHP style of communication

Rio Tinto

- The managing director of Rio Tinto told the inquiry that its Singapore hub made a $719 million profit and paid a 5 per cent tax rate ($44 million) in 2014;
- It also admitted that it was under audit by the Tax Office but said it had not been given a position paper setting out the additional amount of tax the ATO was claiming back;
- Rio Tinto intends to be open and transparent about taxes paid on their worldwide operations.
- It produces "Rio Tinto Taxes Paid" annually showing the effective corporate income tax rate and also all tax payments for each of the main countries where the Rio Tinto Group has revenue-generating operations or projects.

Rio Tinto CFO Chris Lynch interview on transparency : https://twitter.com/riotinto/status/851995451700019200

Does transparency always pay off?

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BHP deal

- BHP Billiton agreed to pay **$390m** to settle tax bill dispute over Singapore business.

- The miner has been hit with tax bills spanning 11 years — between 2003 to 2013 — that total $661 million in primary tax. When you add in interest and penalties, this takes the total tax bill to **more than $1 billion**.

Rio Tinto dispute

- Rio Tinto plans to fight against the ATO tax assessments for income years 2010 to 2013 which would lead to it paying additional tax of $379m plus interest of $68m**–$447m** in total. This payment would be in addition to the $A25.5 billion of taxes and royalties Rio Tinto paid in Australia during the same four-year period.

- It believes it has done nothing wrong because it confirmed its pricing arrangements with the ATO more than a decade ago on certain transaction between entities in Australia and Singapore. It also believes the assessments paid will trigger double taxation, which it plans to reclaim via the Australia-Singapore double tax treaty.

Does transparency always pay off?

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	Good corporate citizenship	Transparency	Financials to pay
BHP	☆☆☆☆☆	☆☆☆☆☆	$Xm
Rio Tinto	☆☆☆☆☆	☆☆☆☆☆	$Ym

Checklist for boards of directors of New Zealand companies

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- ❑ Does the board have a well-documented overarching tax strategy?
- ❑ Is this strategy actually followed in practice by the company's management?
- ❑ Is the strategy and its implementation regularly reviewed and updated?
- ❑ Does the company have a tax control framework to manage day-to-day tax risks?
- ❑ Is senior management confident in the capacity and capability of the systems, procedures and personnel in place to achieve overall company tax compliance?
- ❑ Is the tax or finance team on top of all relevant law changes (such as the anti-BEPS measures, the Common Reporting Standard and revisions to tax treaties)?
- ❑ Does management report regularly to the board on potentially material tax issues and risks?
- ❑ Has the operation of the tax control framework been tested independently in the last three years?
- ❑ Is a clear statement made in the company's annual report as to tax governance?
- ❑ Is annual reporting of tax payments and provisions sufficiently transparent for all relevant stakeholders to fully understand the company's overall tax position in New Zealand?

Source: New Zealand Inland Revenue, "Multinational Enterprises Compliance Focus (2019)", available at: www.ird.govt.nz

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OECD on the importance of Corporate Tax Governance

"102. Enterprises' commitments to co-operation, transparency and tax compliance should be reflected in risk management systems, structures and policies. In the case of enterprises having a corporate legal form, corporate boards are in a position to oversee tax risk in a number of ways. For example, corporate boards should proactively develop appropriate tax policy principles, as well as establish internal tax control systems so that the actions of management are consistent with the views of the board with regard to tax risk. **The board should be informed about all potentially material tax risks and responsibility should be assigned for performing internal tax control functions and reporting to the board.** A comprehensive risk management strategy that includes tax will allow the enterprise to not only act as a good corporate citizen but also **to collectively manage tax risk**, which can serve to avoid **major financial, regulatory and reputation risk** for an enterprise."

Source: New Zealand Inland Revenue, "Multinational Entreprises Compliance Focus (2019)", available at: www.ird.govt.nz

Real effects of public CbCR and the firm structure of European banks

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Table 1.1: Sample selection EU banks

Selection criteria	Firms
European Banking Authority (EBA) list of global systemically important banks (G-SIB) as at 2015	37
Firm from Norway not subject to CBCR disclosure rules (DNB)	-1
Firms for which no consolidation scope could be obtained (ABN Amro, ING, Banca Monte Dei Paschi Di Siena, Nationwide)	-4
Purely domestic firm according to the consolidation scope (Banque Postale)	-1
Final sample	31

This table presents the sample selection for EU banks.

Table 1.2: Sample selection EU insurers

Selection criteria	Firms
European Insurance and Occupational Pensions Authority (EIOPA) list of identified insurance groups for Supervision as at 2015	102
Firms from EU countries not included in the primary sample of EU banks e.g. Bulgaria or Greece	-20
Firms for which no consolidation scope could be obtained	-16
Firms for which English language financial statements could not be obtained	-8
Firms domiciled in tax havens	-2
Firms part of an EU bank	-22
Bankruptcy or merger during the sample period	-3
Firms with missing data to calculate control variables	-2
Purely domestic firms according to the consolidation scope	-2
Final sample	27

This table presents the sample selection for EU insurers.