



Publicly Traded Companies Should Publicly Report Where They Are Booking Profits and Paying Taxes

Information Is Not a Trade Secret

TO: Interested Parties
FROM: The FACT Coalition
DATE: November 30, 2018
RE: Publicly Traded Companies Should Publicly Report Where They Are Booking Profits and Paying Taxes — Information Is Not a Trade Secret

Overview

Globalization has made it easier for multinational corporations (MNCs) to shift profits and book revenues in offshore jurisdictions as a method to minimize their tax liabilities.

Prior to the passage of the 2017 U.S. tax law, estimates pegged offshore profits of U.S. companies at \$2.6 trillion with a deferred tax liability of more than \$750 billion.¹ Using data from the Bureau of Economic Analysis (BEA), Professor Kim Clausing recently found that revenue losses from annual profit shifting grew from just under \$20 billion in 2000 to nearly \$120 billion in 2015.²

As governments around the world begin to crack down on aggressive offshore tax avoidance, numerous companies find themselves in the crosshairs of tax authorities. Alphabet (Google),³ Amazon,⁴ Apple,⁵ Caterpillar,⁶ Gap,⁷ Facebook,⁸ Hewlett-Packard,⁹ McDonalds,¹⁰ Microsoft,¹¹ Shell,¹² and Starbucks¹³ have all faced penalties or are in disputes with tax authorities over their aggressive tax avoidance practices.

The new tax law will do little to change the risk factors. While Congress eliminated deferral of taxes for profits booked offshore, the new 50% (or greater) discount on the overseas rate creates a powerful new incentive to move money overseas.¹⁴

For policymakers, investors, and other stakeholders to better understand how the tax laws operate in practice, there is a need for public country-by-country reporting (CbCR) of certain revenue, profit, tax, and other information for multinational corporations (MNCs). At a minimum, to effectively identify and appreciate the impacts of international tax-related information on a company's performance and valuation, companies should report on a country-by-country basis:

- profit or loss before taxes;
- income tax accrued for the current year;
- revenues from unrelated parties, related parties, and in total;
- income tax paid (on a cash basis);
- effective tax rate;
- stated capital;
- accumulated earnings;
- number of employees; and
- tangible assets other than cash or cash equivalents.

Larger companies, companies with annual revenues above \$850 million, already report much of this information to the Internal Revenue Service (IRS). As such, the information is available. One question that has been raised is whether disseminating that information or similar information would reveal company trade secrets. It would not.

Background

Country-by-country reporting, or CbCR, is one of the Base Erosion and Profit-Shifting (BEPS) measures agreed to by the member states that comprise the Organization for Economic Cooperation and Development (OECD), of which the United States is a member. As part of the BEPS initiative, OECD member nations have agreed to adopt legislation that requires large multinational corporations/enterprises (MNCs or MNEs) — which comprise about 10% of internationally operating companies — to disclose, on a country by country basis for the corporate group, certain information to tax authorities in the parent company’s home jurisdiction. That information is then provided to tax authorities in other countries upon request (in the case of the US, only to countries with which the US has a tax treaty in place).

In the US, CbCR was implemented through regulations from the Department of the Treasury in 2016.¹⁵ Those regulations require large US MNCs (earning at least \$850 million in revenues per year) to disclose the subsequent information to the IRS:

- a) The following information to be presented as an aggregate of the information for all subsidiaries resident in each tax jurisdiction:
 - a. Revenues generated from transactions with other subsidiaries.
 - b. Revenues not generated from transactions with other subsidiaries.
 - c. Total revenues.
 - d. Profit or loss before income tax.
 - e. Total income tax paid on a cash basis to all jurisdictions, and any withholding taxes on payments to the subsidiaries.
 - f. Total accrued current tax expense recorded on taxable profits or losses.
 - g. Stated capital.
 - h. Total accumulated earnings.
 - i. Total number of employees on a full-time equivalent basis.
 - j. Net book value of tangible assets.

- b) The following information to be reported entity-by-entity with respect to each subsidiary in the MNE group:
 - a. Complete legal name of the subsidiary.
 - b. Tax jurisdiction where the subsidiary is resident for tax purposes (if any).
 - c. Tax jurisdiction where the subsidiary is organized or incorporated (if different from the tax jurisdiction of residence).
 - d. Tax ID number used for the subsidiary by the tax administration of the subsidiary’s tax jurisdiction of residence (if any).
 - e. Main business activity or activities of the subsidiary.¹⁶

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For many years, for a variety of reasons, some economists, accountants, investors, and policymakers have contended that the majority of this information (and in some cases additional information) should be disclosed publicly by MNCs. Many MNCs already disclose much of this information in the aggregate on an MNC-wide basis in public filings with the Securities and Exchange Commission (SEC).

One concern over making such information public on a country-by-country basis is that doing so might force MNCs to reveal trade secrets that would hurt their businesses. This briefing paper reviews the nature and status of trade secrets under US law and whether CbCR disclosures by MNCs would result in the disclosure of trade secrets that would be detrimental to their businesses.

What is a Trade Secret?

According to the Congressional Research Service, a “trade secret is confidential, commercially valuable information that provides a company with a competitive advantage, such as customer lists, methods of production, marketing strategies, pricing information, and chemical formulae.”¹⁷ There is, however, no single definition of trade secrets in US law. At the federal level, any federal trade secrets legislation must comply with the definition that the US agreed to in the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994. TRIPS is one of the foundational treaties of the WTO. Most countries in the world must also recognize trade secrets in this same manner.

Trade secrets are one of four types of intellectual property recognized by US law. Unlike trademarks, copyrights, and patents, however, trade secrets cannot be registered and do not go through any government or other formal approval process to ensure that they will be recognized as intellectual property owned by a specific person or entity. Instead, the intellectual property in trade secrets arises from the nature of the “secret” and the measures taken by the company to protect that secret. Trade secrets are recognized in the adjudication processes that occur when a person alleges that the property that they believe to be, and have tried to protect as, their trade secret has been misappropriated by another party.

The federal statute that renders the misappropriation of one’s trade secrets illegal is the Economic Espionage Act (EEA), which was amended by the more recent Defend Trade Secrets Act of 2016 (DTSA). In addition, the Uniform Law Commission¹⁸ published a model Uniform Trade Secrets Act (UTSA) in 1979 (amended in 1985), which the 50 US states can consider for use in their legal codes. The model legislation, which has been transposed into law in 48 states, the District of Columbia, Puerto Rico, and the US Virgin Islands, contains yet another definition of trade secrets.¹⁹ It is also important to note that the federal law does not preempt any state laws. A claimant can sue either in federal or state court to pursue a claim, so one must consider all three definitions — TRIPS, EEA (as amended by DTSA), and UTSA.²⁰

Each of these definitions is presented in Table 1 for review and reference.

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Table 1. Definitions of Trade Secrets

<i>WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994)</i>	<i>Economic Espionage Act (1996), as amended by the Defend Trade Secrets Act of 2016 (showing amendments)</i>	<i>Uniform Trade Secrets Act (1978/1985)</i>
<p>TRIPS does not use the term “trade secrets” but instead requires protection of “undisclosed information,” which is defined as information that:</p> <ol style="list-style-type: none"> 1. “is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; 2. has commercial value because it is secret; and 3. has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret. 	<p>[A]ll forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—</p> <ol style="list-style-type: none"> a) the owner thereof has taken reasonable measures to keep such information secret; and b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, <u>the public another person who can obtain economic value from the disclosure or use of the information;</u> 	<p>“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:</p> <ol style="list-style-type: none"> (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
TRIPS Agreement, art. 39, para. 2.	18 U.S.C. §1839(3).	

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A Four-Part Test

In practice, the three definitions (EEA, UTSA, and TRIPS) are extremely similar. They each require that the “information” claimed to be a trade secret is (1) certain types of information, (2) not generally known outside the company, (3) derives economic value from being secret, and (4) is subject to reasonable measures taken to keep the information secret. To be considered a trade secret under federal law, CbCR information must meet each of these criteria. One element in particular, however, demonstrating that corporations derive economic value from keeping CbCR information secret, would be extremely difficult to establish, thus indicating that CbCR information does not qualify as a trade secret.

Information

One practical difference between the EEA and UTSA definitions is that the EEA sets out an exhaustive list of the specific types of information that may qualify as trade secrets, while the UTSA refers generally to any “information” as being eligible to become a trade secret and then provides a few examples.²¹ Despite the fact that the EEA sets out the universe of the specific types of information that can become trade secrets, the list is very broad, including “all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or code” as potential trade secrets. While the UTSA definition allows any “information” to become a trade secret, the examples provided indicate an intention to cover a far narrower set of informational assets than in the EEA, confined to “a formula, pattern, compilation, program, device, method, technique, or process.” Despite the differences in the two definitions, given the broad reach of both, one can conclude that CbCR information could be categorized a trade secret, because it is “information” under the UTSA and is at least financial or business information under the EEA.

Not Generally Known Outside the Company

Whether the information required to be disclosed under CbCR is generally known outside the MNC can differ greatly from one MNC to another. For publicly traded MNCs, for example, all significant subsidiaries must be listed in their 10K filings, which are already publicly available on the SEC’s Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Whether they are earning revenues in a given jurisdiction may be known, because their products or services are available in those markets or their activities (for example, drilling for oil) will be evident. Even where an oil company takes great pains to disguise through anonymous companies that the particular oil company is drilling or exploring in a specific location, the industry generally knows where exploration or drilling is taking place, which is the key “secret” one would be protecting. In contrast, some categories of CbCR information may be unknown outside the company such as its profit or loss in a given jurisdiction, stated capital, or number of employees. It is therefore an observable fact that at least some of the information required to be disclosed under CbCR is not generally known outside of the covered corporations.

Derives Economic Value from Being Secret

The third criterium is whether the corporation derives economic value from keeping its CbCR information secret. The facts indicate that, while an MNC may value the secrecy of CbCR information, the corporation does not derive actual economic value (i.e. value generation) from that secrecy. The inability of CbCR information to generate revenue — either for the corporation or its competitors — indicates that CbCR information should not be treated as a trade secret.

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Consider the types of information usually treated as trade secrets. Client lists. Design details. The process for manufacturing a high-performance drill bit. These are all examples of information recognized by the courts as providing corporations with economic value when kept secret — they give the corporation a competitive advantage in the marketplace because nobody else has that information. If a competitor were to procure that information, it could also use it to generate revenues.

One strong indicator that a corporation derives economic value from a particular type of information it has identified as a trade secret is if the corporation has conducted a specific valuation of that asset, and accounts for it in the corporation's financial reporting, typically as an intangible asset. Corporations can obtain trade secret valuation services from third party experts or conduct their own assessments using primers available on the internet. The factors typically considered in those valuations suggest, however, that the information contained in CbCR disclosures should not qualify as trade secrets.

Donal O'Connell, Managing Director of Chawton Innovation Services, Ltd., and Oliver Treidler, Managing Director of TP&C GmbH, begin their advice on valuing information assets by noting that under Independent Accounting Standard 38, an intangible asset can be a trade secret "so long as it meets three critical attributes—identifiability, control, and future economic benefit."²² They explain that trade secret valuations can be performed in anticipation or in the context of mergers, acquisitions, bankruptcy, selling the IP, licensing, fair recovery and quantification of damages in the case of misappropriation, raising capital, and for tax and accounting purposes, including correctly establishing transfer prices between MNC group entities.

O'Connell and Treidler identify discounted cash flow (DCF) as one of the "key methodologies" used to value trade secret assets and to establish their "future economic benefit." Under DCF, "all future cash flows associated with the trade secret asset are estimated and discounted by using cost of capital to give their present values."

In other words, the future economic benefit of a trade secret is determined by identifying and calculating the future cash flows associated with the asset and discounting the cost of capital used to create the trade secret.

When one reviews the types of information that must be disclosed under CbCR, however, they fail to demonstrate a future economic benefit. They do not have a future income stream associated with them. Nor would they generate income for a competitor who obtained the information. It would be straining these concepts significantly to argue otherwise.

Examples include information depicting a corporation's profits or losses, accumulated earnings, or number of full-time employees on a country-by-country basis; none of those pieces of information has an associated revenue stream — for the corporation or a competitor — in the same sense as a secret client list or manufacturing process.

O'Connell and Treidler recommend that companies "provide a plausible documentation of their assumptions in respect to the value" of a particular trade secret. They also identify a number of other considerations to be taken into account in the valuation process, such as related investment outlays, the anticipated period before a competitor is likely to discover the secret "through reverse engineering or other proper means," investment returns, the value of associated licenses or future sales, and prior use rights. For the most part, these additional factors relate to revenue generation from the asset identified as a trade secret.

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In contrast to the types of assets analyzed by the experts, it is difficult to see how an MNC could derive that kind of value generation from disclosing the types of information required under CbCR. Nor could corporations provide “plausible documentation” on the assumptions used to calculate the value of keeping that CbCR information secret.

Three academics offer another trade secret valuation methodology, but it, too, fails to establish that CbCR information should be treated as a trade secret. James Hoffman, Dean of New Mexico State College of Business, Dr. Bradley Ewing, Chair of Free Enterprise at Texas Tech University’s Rawls College of Business, and Dr. Mark Thompson, Associate Dean of Augusta College and Professor at its College of Business, have collaborated on a lengthy article entitled, *How Much Are Your Trade Secrets Worth? Here’s How to Figure It Out.*²³ They focus their valuation of trade secrets on the financial consequences that would follow if a trade secret were misappropriated. The authors reason that the enforcement of a person’s IP rights focuses entirely on whether a trade secret exists, whether it was actually misappropriated, and what economic damages were caused to the business as a result. The analysis suggests that if theft of the claimed trade secret has no economic damage associated with it, the company had no real trade secret to begin with.

The academics identify four different methods for evaluating the economic damages stemming from misappropriated trade secrets. They are: 1) lost profits, 2) unjust enrichment, 3) reasonable royalty, and 4) transaction-specific reasonable royalty. In alignment with the earlier analysis, each of these forms of damages relates to the trade secret as having an inherent value as a revenue driver.

Viewed from this valuation perspective, CbCR elements are not, in themselves, revenue drivers for an MNC or its competitor. Disclosing a corporation’s profits, revenues, or tax payments on a country-by-country basis would not, for example, help either the corporation or its competitor produce royalties or demonstrate unjust enrichment.

Some may argue that while perhaps none of the CbCR elements alone are trade secrets, some elements, taken together, would reveal trade secrets, such as providing insights into a corporation’s worldwide business strategy or its decision to target a particular jurisdiction’s market. However, this contention raises a series of questions: Which CbCR elements, taken together, would reveal the claimed trade secret? Would it reveal a trade secret or simply open the door for a competitor to speculate about matters related to the business? Would that competitor have been able to engage in similar speculation using publicly available information? Does the claimed trade secret have independent economic value in the manner discussed above, as a revenue driver for the corporation or a competitor? If so, how? Again, it is difficult to prove that getting general information about where a corporation is doing business or how profitable that market segment is will produce royalties or other revenues for the owner of that information.

Some MNCs may be concerned that CbCR might allow a competitor, or perhaps a tax authority, to determine how the corporation arranges its cash flow in order to avoid as much tax as possible. While tax avoidance allows the firm to pay fewer taxes, competitors are just as likely to have their own tax arrangements and are unlikely to profit from their competitor’s tax practices. In addition, as a matter of policy, tax avoidance should not be considered a valid element of economic competition. The US Congress reached that conclusion in 2011, when it adopted the Leahy-Smith America Invents Act and prohibited the patenting of tax avoidance strategies.²⁴ The legislative history notes that tax strategies are derived from publicly available information, that all taxpayers have the same right to minimize their taxes, and that “any future tax strategy will be considered indistinguishable from all other publicly

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available information.”²⁵ The US Patent and Trademark Office executed that policy determination in a September 2011 rulemaking and does not allow tax strategies to be patented.²⁶

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Measures Have Been Taken to Keep the Information Secret

Finally, in order to claim that information is a trade secret, the claimant must have taken measures to keep the information secret. Whether enough measures have been taken is a facts and circumstances test, but the reasonableness of the measures must be analyzed in light of the claimed value of the trade secret. Examples of possible secrecy measures include limiting disclosure of the information to specific people within the company, protecting it physically (using fences, electronic entry passes, prohibiting cameras or cell phones in proximity) or through electronic measures, requiring non-disclosure agreements from anyone with access to the information, or identifying the information by stamping it confidential or proprietary or as information that cannot be imparted to future employers or for personal use as part of an employment, termination, or other related contract.²⁷ The trade secret must be identified as such, and a general confidentiality-of-everything agreement is unlikely, alone, to be deemed a reasonable measure.

This factor also does not support treating CbCR information as a trade secret. An initial problem is calculating the value of keeping the CbCR information secret so as to evaluate the reasonableness of the secrecy measures taken; reliable calculations seem out of reach. Another problem is that the corporation may have made some elements of the CbCR information public in another setting. For example, many corporations like to boast on their websites or in their annual reports about the number of countries they operate in, their profits in a given region, or how many jobs they have created in a given country. In addition, many corporations may reveal at least some of the CbCR information on an aggregated, world-wide basis. Such aggregated disclosures, which are subject to reverse engineering (using other types of publicly available information including actual business operations in individual jurisdictions), raise difficult questions as to whether a corporation took reasonable measures to keep the country-by-country information secret.

Still another issue is whether taking steps to keep such information secret is irrelevant in the case of information that does not rise to the level of driving revenue or producing economic value as a result of its secret status, as discussed above.

Misappropriation of Trade Secrets

In addition to meeting the statutory definitions, another approach to determining what qualifies as a trade secret can be found in how trade secret rights are enforced. In both the EEA and the UTSA, the illegal act that can give rise to a claim for trade secret infringement is theft or “misappropriation.” Misappropriation is considered to be broader than stealing, as it encompasses, for example, situations where a former employee who agreed in a nondisclosure agreement not to disclose the trade secret, nevertheless uses that information in a subsequent job in a way that economically benefits a new

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employer. The information was not stolen, but it was used in a way that violates the protection in place around the trade secret.

As discussed earlier, a corporation making the claim that the trade secret was misappropriated must be able to demonstrate economic damage from the misappropriation. That can be quite difficult for CbCR information elements, which raises, once again, the valuation arguments.

In addition, the statutes, case law, and associated commentaries describe actions that do *not* constitute misappropriation. Each states that it is not misappropriation to discover the information through “proper means.” “Proper means” is not fully defined, but has been recognized to include at least: 1) reverse engineering the information, 2) independent development or discovery, and 3) observation of the secret in public use (for example, where a product was created using proprietary knowledge that is a trade secret and a person using or observing the product figures out the secret).²⁸ A corporation’s revenues, profits, capital investments, employees, and tax payments are the types of information that could be discovered through proper means or become public information in many ways — through corporate filings, regulatory actions, criminal proceedings, litigation, Congressional investigations, business negotiations, stock or business analysis, or media stories, among other avenues. Because CbCR information elements are the type of general business data points that would be of interest to a broad array of investors, regulators, policymakers, the media, and the public, the enforcement approach suggests another series of reasons why CbCR information should not be treated as trade secrets.

Other Countries and Similar Disclosure Regimes Do Not Treat CbCR Data as Trade Secrets

It is important to note that information similar to that subject to CbCR is already being publicly disclosed under other transparency regimes without adverse impact. By definition, when the OECD, other countries, or accounting bodies mandate public disclosure of specified corporate information, they have made a policy determination that such information is in the public interest and does not qualify as a trade secret.²⁹

The Extractive Industries Transparency Initiative (EITI)³⁰, the EU Accounting Directive³¹, the EU Transparency Directive³², the EU Capital Requirements Directive³³, the Canadian Extractive Sector Transparency Measures Act³⁴, and the not yet implemented Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act³⁵ all require country-by-country, and in some cases project-by-project, public disclosure of the same, similar, or even more granular information than is required to be disclosed under CbCR. None of these transparency measures has caused the type of economic harm that would have resulted if the disclosed information were, in fact, trade secrets whose disclosure would severely damage particular corporations.

In its 2018 compilation of peer review reports on implementation of CbCR, for example, the OECD found:

- **For Argentina:**

It is noted that Article 11 of the secondary [implementation] law provides that: *“The information contained in the Country by Country Report does not imply, by its nature and content, the disclosure of trade, industrial or professional secrets, commercial or informational processes, which disclosure is contrary to the public interest.”* Argentina explains that the purpose of this provision is to clarify that information to be provided in a CbC report should not be considered as trade, industrial or professional secrets, commercial or informational processes, which

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disclosure would be contrary to the public interest. Thus, taxpayers may not invoke these as a basis for refusing to provide information in a CbC report.³⁶

- **For Lichtenstein** (historic bastion of financial secrecy):

It is noted that Article 14 of the [Lichtenstein] CbCR Act provides that “statutory provisions concerning data, professional or commercial secrets do not preclude the disclosure of information (...) unless it is information covered by protection of confidentiality pursuant to § 108 paragraph 1 subparagraph 2 StPO (Code of Criminal Procedure) and its disclosure would represent an inadmissible circumvention of confidentiality as defined in § 108 paragraph 3 StPO. Constituent Entities resident in Liechtenstein are released from their obligation of confidentiality to the equivalent extent”. Liechtenstein explains that this is an exception to the principle of disclosure: a lawyer subject to legal privilege is not required to divulge to the Fiscal Authority information that has been entrusted to him in his capacity as a lawyer for the purpose of legal advice or for the purpose of use in existing or contemplated legal proceedings. The lawyer must disclose any other information to the Fiscal Authority. Therefore, CbCR information itself is never subject of the legal privilege and has to be exchanged.³⁷

US-registered companies do not have unique attributes that would make this information trade secrets for them but not for similarly situated companies in Europe or Canada.

Conclusion

Some critics of CbCR disclosure requirements incorrectly claim that they would require the disclosure of corporate trade secrets. That misplaced argument sometimes succeeds, because few people understand what a trade secret is, and because the law itself is complex. The bottom line is that, while CbCR information may satisfy some of the statutory elements of what constitutes a trade secret, it cannot satisfy all of them and therefore CbCR information does not qualify as trade secret information. In addition, the inability to delineate the economic damages that would result if CbCR information were to be misappropriated again indicates it does not qualify as trade secrets. Finally, multiple foreign laws and jurisdictions have disclosed the same or similar information without adverse impact, demonstrating that the disclosure of trade secrets is not occurring.

CbCR would not reveal trade secrets. Policymakers should put analysis above rhetoric and require the disclosure of CbCR information in public financial reporting.

For more information, contact Clark Gascoigne at cgascoigne@thefactcoalition.org.

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 - ² Clausing, Kimberly A., “Profit Shifting Before and After the Tax Cuts and Jobs Act,” October 29, 2018. Available at SSRN: <https://ssrn.com/abstract=3274827>.
 - ³ In May 2016, the Paris offices of Google were raided by tax officials, amid reports that the French government is seeking tax payments of 1.6 billion euro (about \$1.8 billion). Chris Arnold, *Google’s Paris Offices Raided In Tax Investigation*, NPR, May 24, 2016, available at <http://www.npr.org/sections/thetwo-way/2016/05/24/479297435/googles-paris-offices-searched-in-tax-investigation>; see also Jamie Robertson, *Google tax row: What’s behind the deal?*, BBC News, Jan. 28, 2016, available at <https://www.bbc.com/news/business-35428966> (reflecting £130 million payment to the U.K. to resolve a tax dispute, as well as reports that the company could owe another €227m in additional taxes to Italy); see also Renae Merle, *Why McDonalds and Google are in trouble in Europe*, Washington Post, May 31, 2016, available at https://www.washingtonpost.com/business/economy/why-mcdonalds-and-google-are-in-trouble-in-europe/2016/05/31/78d091c0-2417-11e6-aa84-42391ba52c91_story.html.
 - ⁴ Arjun Kharpal and Silvia Amaro, *Amazon is ordered to pay nearly \$300 million by EU over ‘illegal tax advantage’*, CNBC, Oct. 4, 2017, available at <https://www.cnbc.com/2017/10/04/amazon-eu-tax-bill-luxembourg-deal.html>. This payment followed revelations that, in 2011, Amazon had sales in the U.K. of 3.35 billion pounds, yet reported a “tax expense” of 1.8 million. See Vanessa Barford and Gerry Holt, *Google, Starbucks, Amazon: The Rise of ‘Tax Shaming’*, BBC News, May 21, 2013, available at <http://www.bbc.com/news/magazine-20560359>.
 - ⁵ Press Release, *State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion*, European Commission, Aug. 30, 2016, available at http://europa.eu/rapid/press-release_IP-16-2923_en.htm.
 - ⁶ Elisabeth Butler Cordova, *Caterpillar’s \$2 billion tax fight with the IRS could change how U.S. companies do business*, CNBC, Jan. 2, 2018, available at <https://www.cnbc.com/2018/01/01/caterpillars-2-billion-tax-fight-with-the-irs-could-change-how-us-companies-do-business.html>.
 - ⁷ Simon Neville and Jonathan Prynne, *U.S. fashion giant Gap embroiled in British tax bill row*, The Evening Standard, Feb. 10, 2016, available at <https://www.standard.co.uk/news/uk/us-fashion-giant-gap-embroiled-in-british-tax-bill-row-a3177126.html> (reflecting the company had paid almost no taxes from 2011-2015, despite earning about £1 billion in sales during that period).
 - ⁸ Richard Phillips, *Facebook Facing Shareholder Scrutiny for Its Offshore Tax Avoidance*, Institute on Taxation and Economic Policy, May 30, 2018, available at <https://itep.org/facebook-facing-shareholder-scrutiny-for-its-offshore-tax-avoidance/>.
 - ⁹ See, e.g., Lynnley Browning, *HP loses \$190 million tax case against IRS*, Reuters, May 15, 2012, available at <http://www.reuters.com/article/us-hp-tax-idUSBRE84EOL820120515>; see also *Hewlett-Packard Company and Consolidated Subs v. IRS*, U.S. Tax Court, Docket Nos. 21976-07, 10075-08, T.C. Memo. 2012-135, May 14, 2012, available at <https://www.ustaxcourt.gov/InOpHistoric/HEWLETPACKARD.TCM.WPD.pdf>; Offshore Profit Shifting and the U.S. Tax Code - Part 1 (Microsoft and Hewlett-Packard) before the U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, S. Hrg. 112-781, 112th Cong. (2012), available at <https://www.gpo.gov/fdsys/pkg/CHRG-112shrg76071/pdf/CHRG-112shrg76071.pdf>.
 - ¹⁰ Rochelle Toplensky, *McDonald’s faces prospect of EU order to pay \$500m in back taxes*, Financial Times, Sept. 18, 2016, available at <https://www.ft.com/content/6346575e-7d90-11e6-8e50-8ec15fb462f4>; see also Renae Merle, *Why McDonalds and Google are in trouble in Europe*, Washington Post, May 31, 2016, available at https://www.washingtonpost.com/business/economy/why-mcdonalds-and-google-are-in-trouble-in-europe/2016/05/31/78d091c0-2417-11e6-aa84-42391ba52c91_story.html.
 - ¹¹ Offshore Profit Shifting and the U.S. Tax Code - Part 1 (Microsoft and Hewlett-Packard) before the U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, S. Hrg. 112-781, 112th Cong. (2012), available at <https://www.gpo.gov/fdsys/pkg/CHRG-112shrg76071/pdf/CHRG-112shrg76071.pdf>.
 - ¹² *Shell facing €7bn bill for ‘anti-competitive’ tax avoidance deal*, Dutch News, June 18, 2018, available at <https://www.dutchnews.nl/news/2018/06/shell-facing-e7bn-bill-for-anti-competitive-tax-avoidance-deal/>.

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- ¹⁵ 81 Fed. Reg. 126 (June 30, 2016).
- ¹⁶ PriceWaterhouseCoopers. *Country-by-Country Reporting – Questions and answers for Asset Managers*. Available at <https://www.pwc.com/gx/en/tax/transfer-pricing/assets/country-by-country-reporting-questions-and-answers-for-asset-managers-part-2.pdf>.
- ¹⁷ Yeh, Brian. *Protection of Trade Secrets: Overview of Current Law and Legislation*. Congressional Research Service R43714, April 22, 2016.
- ¹⁸ Uniform Law Commission is an organization comprised of attorneys appointed by the governors (usually) of each state, Washington, DC, Puerto Rico and the US Virgin Islands who serve voluntarily as Commissioners and draft model laws for adoption at the state level in areas where it is believed that uniformity of laws across the states would benefit citizens.
- ¹⁹ Information about the Uniform Trade Secrets Act, its adoption, and the full text of the Act, see <http://www.uniformlaws.org/Act.aspx?title=Trade%20Secrets%20Act>.
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<https://meijburg.nl/uploads/files/news/2016/03/ECOFIN%20agreement%20on%20non-public%20CbCR%20mrt%202016.pdf> (describing how the EU Council of Ministers, in creating its compromise text for the CbCR Directive, added a new recital to the proposal, “emphasizing that the information exchanged does not lead to the disclosure of trade secrets, while the explicit reference to the impossibility of invoking Article 17(4) of the current [EU Directive on Administrative Cooperation], which allows Member States to refuse to exchange information on the grounds of trade secrets, was deleted”).

³⁰ Map of countries available at <https://eiti.org/countries>.

³¹ [Directive 2013/34/EU](#) of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

³² [Directive 2004/109/EC](#) of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

³³ [Directive 2013/36/EU](#) of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

³⁴ Extractive Sector Transparency Measures Act, S.C. 2014, c. 39, s. 376.

³⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, July 21, 2010.

³⁶ OECD. *Country-by-Country Reporting – Compilation of Peer Review Reports Phase 1*. OECD 2018. Endnote 11 of the Argentina Section. Available at <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2018/06/08/bijlage-2.-oeso-peer-review-rapport-country-by-country-reporting/bijlage-2.-oeso-peer-review-rapport-country-by-country-reporting.pdf>.

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