



Australian
National
University

International Tax
Design for the
21st Century

POLICY BRIEF 9/2021

Country-by-Country Reporting

December 2021

Produced by

Tax Group

Melbourne Law School

Tax and Transfer Policy Institute

Crawford School of Public Policy

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About this Policy Brief Series

This Policy Brief was produced as part of Discovery Project DP170104244, *Are tax base erosion and profit shifting countermeasures effective?* Australian National University and Melbourne University, funded by the Australian Research Council (Chief Investigators Alfred Tran and Miranda Stewart). This policy brief series is hosted by the Melbourne School of Government as part of its *Regulation and Design* research stream.

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Summary

This policy brief makes the following key points:

- The G20/OECD Base Erosion and Profit Shifting (**BEPS**) Project is an international initiative intended to strengthen the international tax system through the adoption of a 15 point plan, and the 2021 Pillar One and Pillar Two consensus proposals.
- BEPS Action 13 recommends that all countries institute a new approach to tax reporting for large Multinational Enterprises (**MNEs**) called Country-by-Country (**CbC**) reporting. The adoption of CbC reporting is a minimum standard that must be adopted by all countries participating in the Inclusive Framework on BEPS.
- The aim of Action 13 is to ensure that large MNEs report the allocation of income, profit, taxes paid and economic activity in CbC reports among the jurisdictions in which they operate and to share CbC reports among tax authorities in these jurisdictions. CbC reports are required for MNEs with consolidated revenue of at least €750 million and are intended to support high level transfer pricing and BEPS risk assessments by tax authorities.
- The Action 13 recommendations included a package of model legislation and model agreements to support exchange of CbC reports between tax authorities. This requires reporting, collection and transmission of the data following a global standardised format, based on the Common Reporting Standard (**CRS**).
- The first CbC reports were exchanged in 2018. To date, over 100 countries have reformed their domestic tax law to enable CbC reporting and 83 jurisdictions have activated an exchange relationship enabling sharing of CbC reports. The OECD in its Corporate Tax Statistics 2020 and 2021 has used aggregated CbC reporting data to provide information about BEPS in countries around the world.
- The Action 13 CbC reporting minimum standard was reviewed by the OECD in 2020, including a public consultation. Participating states are subject to mandatory annual peer review of their implementation of CbC reporting.
- Australia implemented CbC reporting in its legislation early, ahead of the release of the Action 13 Final Report in 2015.

Introduction

The G20/OECD Base Erosion and Profit Shifting (**BEPS**) Project is an international initiative intended to strengthen the international tax system through the adoption of a 15 point plan, and the 2021 Pillar One and Pillar Two consensus proposals. This policy brief discusses BEPS Action 13 which recommended that all countries institute a new approach to tax reporting for large Multinational Enterprises (**MNEs**) called Country-by-Country (**CbC**) reporting. Action 13 CbC reporting is a minimum standard that must be adopted by all states which are members of the Inclusive Framework on BEPS (more than 140 jurisdictions).

This brief then explains the BEPS Action 13 CbC reporting recommendations and the legal and technological requirements for such reporting and discusses the implementation of CbC reporting globally and in Australia. The brief examines the growing use of CbC aggregated data by the OECD and researchers as an important source of information about BEPS. Finally it discusses the impact and future expectations for CbC reporting and other MNE tax information requirements.

1 What is BEPS?

The G20 declared the era of bank secrecy over in 2009 and later called for action to strengthen international taxation standards. The OECD responded with a 15-point Action Plan to address taxation issues with digitalisation (Action 1); and reform the international tax system to bring cohesion (Actions 2-5), restore substance (Actions 6-10), improve transparency (Actions 11-14), and develop a multilateral instrument (Action 15). This launched the international project to prevent Base Erosion (or double non-taxation) and Profit Shifting from jurisdictions where profitable activities take place: the BEPS Project.

OECD working groups developed technical policy proposals (released October 2015), recommending updates to the model tax convention, OECD-issued guidance, and domestic policy. From November 2016, the Multilateral Instrument would update more than half of the world's bilateral tax agreements.

OECD/G20 BEPS project participation is now almost global with the launch of multiple global forums and the Inclusive Framework (now 139 jurisdictions), membership of which requires commitment to the BEPS four 'minimum standards'. Having broadly addressed its mandate to implement the proposed package, the Inclusive Framework delivered in October 2021 Pillar-One (on a new nexus approach) and Pillar-Two (on a minimum global tax) as consensus proposals to tackle the digitalising global economy.

2 Action 13: Country-by-Country Reporting

What is the issue?

An important challenge for tax authorities in enforcing corporate tax has been accessing reliable and thorough information about the income, profits and global activities of MNEs. Without a free flow of information on the basis of an administrable common standard between the jurisdictions in which they operate, MNEs are able to manipulate data to achieve tax outcomes favourable to them.

Without accurate information about the global allocation of income, profits and taxes of MNEs, tax authorities face difficulties in enforcing tax rules. In particular, transfer pricing rules that aim to prevent the mispricing of transactions to allocate profits to tax havens by MNEs require information about the true allocation of income and profits across jurisdictions. It may be difficult for tax authorities to identify how much tax revenue they have effectively lost due to transfer pricing.

A crucial way to begin tackling this issue was to facilitate the sharing of information between tax jurisdictions to support them to gain an understanding of the full range of activities and transactions of MNEs and to hold them to account for discrepancies in tax reporting in different jurisdictions. Tax jurisdictions would be able to get a clear picture of the MNE's global organisation and the extent of its operations in different jurisdictions, as well as specific transactions between subsidiaries, helping to determine the extent of tax avoidance or BEPS practices.

The implementation of an effective data exchange system about MNEs would itself incentivise taxpayers to carefully consider their own compliance with the rules, at risk of detection by the relevant tax authorities – which the OECD terms as the creation of a 'culture of compliance' (OECD, 2015: 12). It would greatly improve the standing of tax jurisdictions in tackling BEPS generally, enabling the identification of issues in common practices and problematic taxpayers and provide a foundation for co-operative approaches, such as joint audits. Processes as complex and fact-intensive as transfer pricing risk assessments and audits, which require evaluating transactions in different jurisdictions and markets, could be completed in an accurate and orderly manner.

What does the OECD Recommend?

The Action 13 Final Report released in 2015 recommended implementation of CbC reporting as a minimum standard that must be adopted by all countries participating in the Inclusive Framework on BEPS. The minimum standard would apply for reporting and recording reports by MNEs with global consolidated group revenue of at least €750 million. The data reported would encompass the global allocation of income, profit, taxes paid and economic activity in CbC reports among the jurisdictions in which they operate.

The Action 13 report recommended a three-tiered approach consisting of three separate files that between them contain the relevant and reliable information necessary to perform thorough transfer pricing risk assessment analyses and audits: the **Master file**, **Local file**, and **CbC report**.

- **Master file** (OECD, 2015, p. 14)

The **Master file** contains information that provides an overview of the MNE's business as a group, allowing tax authorities to understand MNE global economic, legal, financial, and tax arrangements. It includes information about the MNE's business operations and organisational structure globally; its transfer pricing policies; and how the MNE allocates global income and economic activity within the group. This is a high-level overview and it would be expected that even if individual members of the MNE submit this file separately to their relevant tax jurisdictions, the information contained would not differ between them.

- **Local file** (OECD, 2015, p. 15)

The **Local file** contains information relating to specific transactions between the members of the MNE in relation to a specific tax jurisdiction. This acts as a supplement to the Master file, allowing tax authorities to check these individual transactions within the context of the MNE's global operations.

- **CbC report** (OECD, 2015, p. 16)

The **CbC report** includes specific information about the global allocation of revenue, taxes paid, and more specific indicators of economic activity as required by individual jurisdictions in which the MNE operates. The report would also include a list of Constituent Entities within the MNE, including their relevant tax jurisdictions, and the nature of the main business carried out by each Entity.

As one of four minimum standards in the BEPS Project, all members of the Inclusive Framework on BEPS must undertake to implement CbC reporting in their domestic law. This is because the effectiveness of this Action, and the BEPS Action Plan more generally, depends on the scale of international co-operation between jurisdictions.

According to the 2021 Peer Review on Action 13, over 100 jurisdictions have implemented a domestic legal framework for CbCR, with more having final legislation for such approved that is pending official publication. 84 jurisdictions have provided detailed information to assure the Inclusive Framework that these appropriate measures are in place. 33 jurisdictions have been given a recommendation to finalise their domestic legal or administrative framework, and 43 received recommendations for specific improvements. Finally, 83 jurisdictions have information exchange agreements with other jurisdictions in place.

3 How has the Action Been Implemented Globally?

As CbC reporting is a BEPS minimum standard, monitoring of country implementation of Action 13 is done through annual peer reviews. These reviews are conducted in accordance with the terms of reference and methodology released by the OECD, updated most recently in October 2020. As of March 2021, 131 countries are included in the most recent peer review report, 90 of which have already domestically introduced CbC report filing obligations. There are 41 countries still in the process of domestically implementing CbC reporting obligations. While CbC reporting has rapidly expanded, the least developed countries have not yet benefited from CbC information or exchange of CbC reports. More generally, most of the poorest countries of the world do not yet benefit from automatic exchange of information to support tax enforcement.

In June 2018 the first exchanges of CbC reports took place. The Inclusive Framework on BEPS supported tax administrations in getting accustomed to these new resources, including how to incorporate CbC reports into tax risk assessments, such as through the release of guidance documents. They have also formed the heart of several other programs, such as the International Compliance Assurance Programme, which aims to provide greater tax certainty to and about MNEs.

To date, there are over 3,000 bilateral relationships between countries for the exchange of CbC reports. According to the OECD, this means that virtually all MNEs with a consolidated group revenue of at least €750 million (or local equivalent) are required to file a CbC report. These exchanges are underpinned by the Multilateral Convention on Administrative Assistance in Tax Matters, bilateral tax treaties and Tax Information Exchange Agreements. These bilateral relationships are supported by the CbCR Implementation Package's model Competent Authority Agreements recommended in the Action 13 Final Report.

Action 13 peer reviews are conducted by a group comprising delegates of the OECD/G20 Inclusive Framework from Working Party 6 (on the Taxation of MNEs) and Working Party 10 (on Exchange of Information). The first two peer reviews, in the context of beginning implementation of CbC reporting, focused on the domestic legal and administrative framework, the infrastructure surrounding the exchange of information, and the confidentiality and appropriate use of CbC

reports. The most recent peer review has shifted its focus towards all aspects of a jurisdiction's implementation of CbC reporting.

The OECD Corporate Tax Statistics database established in 2020 helps to measure and monitor BEPS and BEPS countermeasures (see Policy Brief 11/2021). The database and annual report has utilised aggregated CbC reports to provide more information on MNE activities. The OECD aims to expand the quality and range of aggregated, anonymised data on these issues, also heavily using information gathered from CbC reports, to aid in BEPS analyses. This database provides information on the global activities of up to 6,000 MNEs operating across 100 jurisdictions.

Data sharing system for CbC reports

The system adopted by tax authorities to share reports is the OECD's Common Transmission System (CTS) and the Common Reporting Standard (**CRS**) for information exchange. The CTS acts as a sort of digital mailroom, receiving report data and automatically checking it to ensure compliance with reporting standards before sending it through to the specified tax jurisdiction.

The CTS infrastructure was launched in 2017 for the automatic transfer of tax information between jurisdictions and was expanded in 2018 for the exchange of CbC reports and the exchange of tax rulings under BEPS Action 5 (see Policy Brief 10/2021). In 2019, the CTS underwent further expansion to include the exchange of 25 different types of information under the updated Extensible Markup Language (**XML**) schema of data, enabling greater flexibility, and standardisation of information for maximum compatibility between systems.

4 How has Australia Implemented the Action?

Government response

In 2013, Australia expressed support for the OECD's *Action Plan on Base Erosion and Profit Shifting*. Australia was Chair of the G20 in 2014 and strongly committed to the Action Plan at the G20 Brisbane Summit in November 2014.

Before the BEPS project commenced, a system of public reporting by the Commissioner of Taxation about the gross income, taxable income, and tax payable by large Australian corporations had commenced, following legislative reform in 2012. Under this system, the ATO is required to publish limited information about large corporate income, taxable income and tax paid, to inform public debate about the corporate tax system. This helps to improve awareness, inspire confidence that corporates are paying the appropriate amount of tax, and encourage voluntary compliance with Australia's tax system. Published reports and data are permanently available and past reports are archived at www.data.gov.au.

Australia's early activity toward the implementation of CbC reporting obligations was fuelled by a 2014 report by the non-government organisation, the Tax Justice Network (**TJN**) on multinational corporate tax avoidance in Australia. The TJN alleged the following points of concern:

- The 200 largest publicly listed entities in Australia had an effective tax rate of 23% over the last decade, lower than the headline 30% corporate tax rate.
- 29% of these entities had an effective tax rate of 10% or less.
- 14% had an effective tax rate of 0%.

Ahead of the publication of the Action 13 Final Report, the Australian government introduced the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015* which proposed the implementation of CbC reporting. Prior to the introduction of the Bill, Treasurer Joe Hockey had met with the G20 finance ministers on the matter of co-operation to reduce multinational tax avoidance and notified G20 of the proposed measures in the Bill.

Legislative reform and treaty adoption

Australia introduced CbC reporting obligations consistent with Action 13 in the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*. The new provisions in Division 815 of the Income Tax Assessment Act 1997 (Cth) came into effect on 1 January 2016.

Division 815 originally required ‘Significant Global Entities’ which met the prerequisites described in the relevant provisions to provide the Commissioner of Taxation with regular reports of defined information. An SGE was defined as a ‘global parent entity’ with an annual global income of AUD\$1 billion or more, or any member of a global parent entity’s group. A global parent entity was defined as an entity that is not controlled by another entity; either through accounting principles, or otherwise commercially accepted principles relating to accounting.

The terminology of ‘Significant Global Entity’ was replaced by the *Treasury Laws Amendment (2020 Measures No. 1) Act 2020* with the term ‘Country by Country Reporting Entity’ (**CbCRE**), along with other changes in legislative language.

The content required in CbCRE reports filed under Div 815 is in substance the **Master file, Local file, and CbC reports**. The penalties for non-compliance with these reporting obligations are in the *Tax Administration Act 1953 (Cth)* Schedule 1, Division 284, which applies to entities that make false or misleading statements about tax-related matters; and Division 286, which applies to entities that fail to lodge statements on tax-related matters on time. For example, a CbCRE that makes a false or misleading report through a failure to take reasonable care may be liable to an administrative penalty under s 284-90(1). Additional penalties are established for CbCREs that enter into tax avoidance or profit-shifting schemes.

Australia is a party to the CRS Multilateral Competent Authority Agreement and is automatically able to exchange CbC reports with other jurisdictions that are also parties, including four of its top five trading partners. Non-signatory jurisdictions, especially including the United States (**US**), have entered into bilateral CbC report exchange agreements with Australia. This puts Australia in a position of being able to better assess the situations of the MNEs trading in its jurisdiction, and make preparations moving forward.

Administrative approach

As the entity responsible for gathering and exchanging CbCR data, the Australian Taxation Office closely follows the OECD recommendations in the Action 13 Final Report. The ATO requires CbCREs to disclose revenue, profit, and taxes paid by its global group that is broken down jurisdiction-by-jurisdiction; the operations and activities undertaken by its global group; and the entity’s international related party dealings. Detailed guidance is provided on its website.

5 Impact

There are many ways in which CbC reporting may have an impact on the tax behaviour of MNEs, and on tax authorities (and their ability to enforce tax rules), or more generally to contribute to our understanding of BEPS. There is little evidence, to date, of improved revenue collection resulting from tax enforcement using CbC reports; however, it is likely too soon to identify tax collection directly attributable to CbC data.

In its [2020-21 Annual Report](#), the Australian Taxation Office revealed the delivery of a new analytical tool, **CbC Interact**, that expands the data available from CbCRs for analytics and reduces manual effort in analysing that information. We can expect to see more innovations as tax authorities begin to identify what information is useful in CbCRs and how to apply it to tax enforcement.

The CbCR reporting obligations have undoubtedly caused a significant increase in compliance activity of MNEs, requiring them to collect and report data that they may not otherwise have collected about country-level activity, income and profit. There is some evidence about the effect of CbC reporting on changing tax planning behaviour, including the use of tax havens, by MNEs. Most studies to date have been done on the public CbC reporting regime that was established for banks in the European Union.

For example, [Joshi et al \(2020\)](#) found some evidence showing a decline in income shifting by multinational banks subject to public CBC reporting, but little evidence suggesting that there had been a significant change in these banks' overall tax avoidance activities. [Brown \(2020\)](#) also found a similar lack of such evidence of a reduction in tax avoidance in response to public CbCR, comparing banks subject to the regime with a control group of multinational insurers. In fact, Brown (2020) found that in some respects, EU banks had actually increased their tax avoidance despite the implementation of CbC reporting, while the use of tax havens remaining largely unchanged. This was identified through studying the MNEs' cash effective tax rates, which exists invertedly proportionally to tax avoidance.

A study by [Overesch and Wolff \(2021\)](#) found that the effect of CbC reporting in curtailing tax avoidance was greater for entities where these practices were 'exposed' for the first time as a result of CbC reporting. This study found that greater tax expenses were recorded in EU banks that had begun to report activities in tax havens following the CbC reporting mandate. We should not overstate the effect of the CbC reporting; these results suggest the effectiveness of CbC reporting as an ancillary policy instrument for curbing tax avoidance, when such reporting exposes the MNE's activities to public scrutiny in the first place.

The best use of CbC reporting, besides its internal use in enforcement and cooperation by tax authorities, is to shed light on BEPS practices. There is evidence that CbC reporting could become an effective diagnostic tool for finding BEPS practices by MNEs. This can help to identify where tax authorities should focus administrative resources, and to focus on changing the international tax system reforms by bringing these issues to light. This is illustrated in the [OECD Corporate Tax Statistics](#) reports of 2020 and 2021, which rely on anonymised aggregated CBC statistics.

The Corporate Tax Statistics data suggests that there is a misalignment between the location where profits are reported by MNEs and the location of their economic activities; for example, investment hubs account for 28% of profits while only holding 4% of employees and 16% of tangible assets. The revenues per employee tend to be particularly high in investment hubs, with a median value of over USD1.7 million in comparison to an average of USD176,000-433,000. The median value of revenue per employee is also clearly divided based on the corporate tax rate of different jurisdictions. Zero

rate jurisdictions have a median of over USD 2.9 million, far more than other jurisdictions. The median share of related party revenues in investment hubs is 37%, much more than the 5-19% share in other country groups.

In the United States, CbC reporting is mandated for all MNEs with consolidated group revenues equal to or greater than USD850 million. Aggregated and anonymised CbC reporting statistics are published by the US Internal Revenue Service (IRS). This was enabled as a result of integrating CbC reporting data into the existing Statistics of Income Program within the IRS, whose purpose is for the collection, analysis, and publication of such data. Using the aggregated US CbC data, researchers have been able to determine various BEPS practices by US MNEs (Garcia-Bernardo et al, 2020).

6 What comes next?

The Action 13 recommendation for CbC reporting is not meant to be an ‘end’ in the global efforts against BEPS, nor does the research show much evidence in support of this proposition. Brown (2020) notes that based solely on the implementation of CbC reporting obligations, the “cost-benefit equilibrium” of tax avoidance has not been sufficiently altered to curtail tax avoidance practices. Although Overesch and Wolff (2021) found that the effect of mandating CbC reporting did curtail tax avoidance to some extent, further research is required to determine whether this decrease in such practices will remain in future, or if MNEs will adapt to having such obligations.

CbC reporting is better understood as a diagnostic tool for BEPS, not a cure, and as a core part of the corporate tax infrastructure of the international tax system. The information obtained from the three-tiered documentation produced by CbC reporting obligations enables tax jurisdictions to learn the avenues that MNEs have used to minimise taxation. Knowing this, countries are better able to cooperate to jointly administer, enforce and reform the international tax system and their own country tax law.

The next step after having gained a clear picture about how MNEs are effectively avoiding taxes is for countries to negotiate ways to stop them. With the first exchanges of CbC reports having only occurred in mid-2018, and 41 countries still in the process of domestically implementing reporting obligations, governments have not yet reached the stage of fully cooperating in tax enforcement. Australia and other countries will continue to expand and improve CbC reporting, exchanges and data analysis, which is likely to improve their use in tax assessment and enforcement.

In Australia, at the time of introduction of CbC reporting, various parties in Parliament, including the Australian Labour Party and the Australian Greens, suggested that the measures included in the Bill did not go far enough. Non-government organisations such as the TJN also made these arguments. Stakeholders have argued in support of public CbC reporting in order to improve scrutiny of tax paid by MNEs and shut down loopholes. The Greens proposed mandating project-by-project reporting, with expansions to information collected in reports and making them completely public, for the sake of investors and to assure the general public of the robustness of Australia’s tax system.

In future, Australia, and other jurisdictions may move towards public CbC reporting, either directly or as the US does, in an aggregate and anonymised reports. This may help in assessing the relationships between various CbC report indicia and BEPS practices, but research from the EU experience to date suggests it is not a panacea for BEPS.

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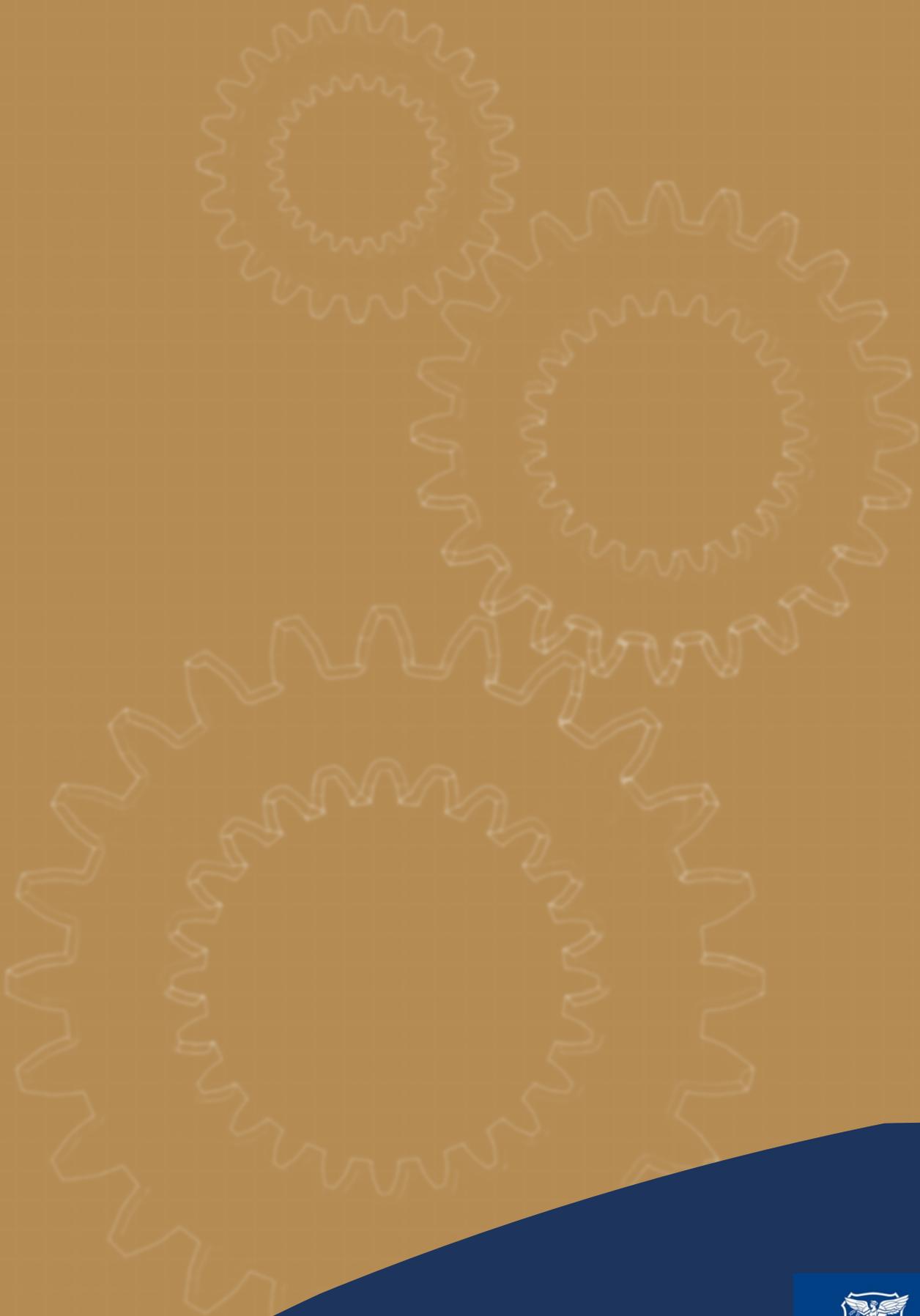
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