



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Public Consultation on the transposition of Directive (EU) 2021/2101 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

Response Template

As set out in the consultation, the Department of Enterprise, Trade and Employment is specifically seeking views on the Member State options provided in Articles 48c(6) and 48d(3) of Directive 2021/2101.

Respondents have the opportunity to comment generally on the Directive at the end of the template and express any views on other specific articles of the Directive should they wish.

Please include your response in the space underneath the relevant option, to set out/ explain your views. Completing the template will assist with achieving a consistent approach in responses returned and facilitate collation of responses.

When responding please indicate whether you are providing views as an individual or representing the views of an organisation.

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Respondents are requested to return their completed templates by email to companylawconsultation@enterprise.gov.ie by the closing date of **Friday 18 February 2022**

Hardcopy submissions are not being received at this time due to remote working.

Please mark your submission as 'response to Public Consultation on the Transposition of Directive (EU) 2021/2101'.

Article 48c (6) – Content of the Report on tax information

Member States may allow for one or more specific items of information otherwise required to be disclosed in accordance with paragraph 2 or 3 to be temporarily omitted from the report where their disclosure would be seriously prejudicial to the commercial position of the undertakings to which the report relates. Any omission shall be clearly indicated in the report together with a duly reasoned explanation regarding the reasons therefor.

Member States shall ensure that all information omitted pursuant to the first subparagraph is made public in a later report on income tax information, within no more than five years of the date of its original omission.

Question – Do you consider that Ireland should take the option to allow for one or more specific items of information, otherwise required to be disclosed to be temporarily omitted from the report, when their disclosure would be seriously prejudicial to the commercial position of the undertakings to which it relates?

Please give reasons for your preference.

The American Chamber of Commerce Ireland (AmCham) welcomes the opportunity to make a submission to the Department's consultation. AmCham is the collective voice of US companies in Ireland and the leading international business organisation supporting the Transatlantic business relationship. Our members are the Irish operations of all the major US companies in every sector present here, Irish companies with operations in the United States and organisations with close linkages to US-Ireland trade and Investment.

AmCham is of the view that Ireland should take the opportunity to allow for one or more specific items of information to be temporarily omitted from an undertaking's report, where the disclosure of that information would be prejudicial to that undertaking's commercial position.

AmCham understands that many companies will have commercially sensitive information, which without the inclusion of this option during the transposition of EU Directive 2021/2101, they may have to include in the report, even though such information would be prejudicial to their commercial position. Should this option not be adopted, the case may arise for businesses that they are subject to commercial harm due to such information being available to their competitors. In this context, AmCham notes that there are a variety of reasons for which a company may have commercially sensitive information.

AmCham is of the view that the adoption of this option will ensure the competitiveness of businesses is protected, providing them with the certainty and security they require in protecting their commercial position.

Furthermore, AmCham notes that, invariably, other Member States may choose to implement this option during their transposition of Directive (EU) 2021/2101. AmCham is of the view that consistency in the implementation of this option across Member States would be beneficial, particularly for companies who operate in several Member States. Given that other Member States may choose to implement this option during transposition, AmCham believes allowing the deferral of publication of commercially sensitive information, for a period of up to five years, will support Ireland's position as an attractive location for inward investment.

Article 48d (3) – Publication and accessibility

Member States may exempt undertakings from applying the rules set out in paragraph 2 of this Article where the report on income tax information published in accordance with paragraph 1 of this Article is simultaneously made accessible to the public in an electronic reporting format which is machine-

readable, on the website of the register referred to in Article 16 of Directive (EU) 2017/1132, and free of charge to any third party located within the Union. The website of the undertakings and branches, as referred to in paragraph 2 of this Article, shall contain information on that exemption and a reference to the website of the relevant register.

Question – Do you consider that Ireland should take the option to exempt undertakings from the publishing requirement, where the report is simultaneously made accessible to the public on the website of the CRO and free of charge to any third party located in the European Union?

Please give reasons for your preference.

AmCham is of the view that Ireland should take the option to exempt undertakings from the publishing requirement when transposing the EU Directive.

In pursuing this option, AmCham is of the view that this would provide flexibility, through an approach which provides choice to the taxpayer, to companies in meeting their obligations under this Directive. Providing this flexibility to companies will be beneficial in terms of ensuring there is not a significant additional administrative burden placed upon companies in ensuring they are compliant with their tax obligations.

As AmCham has previously outlined in its submission to the Department of Finance on the OECD international tax proposals, Ireland’s tax code can be cumbersome for companies to navigate. As such, ensuring flexibility exists for the taxpayer, in the context of the publishing requirement, will allow for companies to ensure compliance with greater ease.

AmCham is of the view that companies are diligent in relation to their filings to the Companies Registration Office (CRO), and that such filings are submitted on-time. As such, allowing companies the option to avail of the exemption within the Directive, whereby the Member State may exempt undertakings from the publication requirement, where their report is made accessible on the website of the CRO, will allow companies to avail of guardrails to ensure their compliance with their obligations under Directive 2021/2101. Furthermore, such guardrails will exist, where a business has been exempted from publication requirements due to the fact that they have extensive experience in filing their reports with the CRO, in line with requirements under company law.

On this basis, AmCham supports Ireland taking the option to exempt businesses from the publishing requirement, where the report is simultaneously made accessible to the public on the website of the CRO.

Please indicate any general comments you may have.