



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](mailto: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.

In our view it is of the utmost importance that Ireland should take this option to allow for deferral of the publication of commercially sensitive data.

The requirement under the public country reporting Directive (EU) 2021/2101 amending Directive 2013/34/EU (“the **Directive**”) to disclose details such as revenue and profitability on a country-by-country basis will allow customers, suppliers and the general public to have visibility on commercially sensitive information which might not otherwise be available including the profit margins of specific businesses. The disclosure of information on profitability (and on items from which such profits could be deduced including tax, accumulated profits etc.) may be seriously prejudicial to the commercial position of EU based businesses and puts them at a competitive disadvantage to non-EU businesses.

The Directive notes the commercial sensitivity of information required to be published and has therefore provided this option in recognition of such concerns. In our view Ireland should adopt this option to protect EU based business.

**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.

In our view, Ireland should take the option to allow this alternative method of publishing the report. The Directive together with various other EU and international tax initiatives are greatly increasing the compliance burden on taxpayers and in our view all options to minimise such burden should be taken.

We therefore propose that taxpayers should be afforded the option to either include the report on their website or via the Companies Registration Office (“CRO”) so that they can chose whichever approach is most suitable for them.

However we would not favour an approach whereby the CRO filing was the only option.

**Please indicate any general comments you may have.**

The legal basis under which the Directive has been enacted is under article 50 of the Treaty on the Functioning of the European Union (“TFEU”), which requires a qualified majority. If the legal basis had been classified as a tax proposal under article 115 TFEU, then unanimity would have been required. In substance, this is a tax measure so, in our view, it is disappointing, that the measure has been pushed through in a manner that only requires qualified majority voting, but it seems to be part of a wider Commission project of incremental corporate tax harmonisation by the back door.

The measure is intended to drive behaviour by providing public information to provoke public debate and ultimately generate political pressure for further changes in law. However the Directive is flawed as the information items to be disclosed are not reflective of the factors that drive profit allocation between jurisdictions and few of the major factors that, under transfer pricing rules, require multi-nationals to record profit and revenue in a jurisdiction are required to be disclosed, e.g. bare numbers of employees is different from an analysis of seniority, technical expertise and value added.

As a result, the measure seems to be designed to result in the publication of data showing a different allocation of profit, tax and revenue than is required under normal tax rules. Accordingly, the measure will likely confuse public debate rather than clarify it.

In the context of the above we consider that Ireland should adopt all measures to minimise the negative impacts of this directive for EU based businesses.