



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

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 1 – 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.**

#### **Background**

On 1 December 2021, the EU published the recently approved Directive on public country-by-country reporting Directive 2021/2101 (the “**Directive**”). The CBCR Directive requires multinational enterprises (“**MNEs**”) (whether headquartered in the EU or outside) and standalone undertakings with activities in the EU and a consolidated revenue over EUR 750 million for each of the last two consecutive financial years to publicly disclose certain information with respect to their activities in each EU Member State, as well as in certain third countries.

The Directive 2021/2101 seeks to enhance corporate transparency and public scrutiny of corporate taxes paid by MNEs carrying out activities in the EU, to tackle tax avoidance and tax evasion, particularly in the field of corporate income tax and aggressive tax planning.

For the first time, non-EU multinationals doing business in the EU through subsidiaries and branches will also have to comply with the same reporting obligations as EU multinationals. While existing Directives provide for the exchange of tax information, to date, the scope has been limited to information sharing between tax authorities. This Directive broadens information sharing by making data publicly available relating to tax paid at the place where profits are made.

The Directive, which was agreed and published in the Official Journal of the EU on 1 December 2021, entered into force on 21 December 2021 and must be transposed into Irish law by 22 June 2023. This information will need to be published on the group’s website by December 2026 for in-scope entities with a 31 December year-end.

#### *Options*

- **Option 1:** The Public country by country reporting (PCBCR) Directive provides for a “safeguard clause” whereby certain information can be temporarily withheld from the Report where its disclosure would be seriously prejudicial to the commercial position of the undertaking. However, such information must be disclosed within the next five years, and reasons for the non-disclosure must be provided.

### Information

The report on income tax information required under Art. 48b of the Directive must include information relating to all the activities of the standalone undertaking or ultimate parent undertaking, including those of all affiliated undertakings consolidated in the financial statements in respect of the relevant financial year.

The information must consist of the following:

(a) the name of the ultimate parent undertaking or the standalone undertaking, the financial year concerned, the currency used for the presentation of the report and, where applicable, a list of all subsidiary undertakings consolidated in the financial statements of the ultimate parent undertaking, in respect of the relevant financial year, established in the Union or in tax jurisdictions included in Annexes I and II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes;

(b) a brief description of the nature of their activities;

(c) the number of employees on a full-time equivalent basis;

(d) revenues, which are to be calculated as:

(i) the sum of the net turnover, other operating income, income from participating interests, excluding dividends received from affiliated undertakings, income from other investments and loans forming part of the fixed assets, other interest receivable and similar income as listed in Annexes V and VI to this Directive; or

(ii) the income as defined by the financial reporting framework on the basis of which the financial statements are prepared, excluding value adjustments and dividends received from affiliated undertakings;

(e) the amount of profit or loss before income tax;

(f) the amount of income tax accrued during the relevant financial year, which is to be calculated as the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches in the relevant tax jurisdiction;

(g) the amount of income tax paid on a cash basis, which is to be calculated as the amount of income tax paid during the relevant financial year by undertakings and branches in the relevant tax jurisdiction; and

(h) the amount of accumulated earnings at the end of the relevant financial year.<sup>1</sup>

Member States shall permit the required information, as listed above, to be reported on the basis of the reporting instructions referred to in Section III, Parts B and C, of Annex III to Council Directive 2011/16/EU.<sup>2</sup>

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<sup>1</sup> PCBCR Directive, art. 48c (2).

<sup>2</sup> PCBCR Directive, art. 48c (3).

- **Option 2:** EU Member States also have the option of allowing undertakings to publish the Report on a public central, commercial or companies register which must be referenced on the website of the relevant undertaking. Access to any such public register must be available free of charge.

The consultation is seeking views on the two Member State's options under the CbCR Directive.

It should be noted that what follows is our view (Deloitte's view) on the matter and that the responses to the questions below are without prejudice to this view.

### Question 1

In our opinion, Ireland should take the option to allow relevant entities for specific items of information to be temporarily omitted from the report, in cases when their disclosure would be seriously prejudicial to the commercial position of the undertakings to which it relates. The period of such omission should extend to five years of the date of the original omission, which is maximum period provided for in the Directive.

We believe that there are several reasons for Ireland to avail of this option, as discussed below:

- Larger companies should not be put at a commercial disadvantage to smaller ones by being required to disclose commercially sensitive information in the public domain. Hence, the option to allow the temporary omission of the information is recommended to allow for a "level playing field" for all entities doing business in Ireland in terms of reporting requirements.
- We acknowledge that the Directive may have significant implications commercially and otherwise for many public and private companies, including large family-owned companies, by compelling them to disclose details which are not currently available to public. By availing of this option, Ireland would allow the undertakings to limit such implications.
- It is important that Ireland avails of such option so it can continue to compete on a level playing field with other States who may also avail of such option in transposing the CbCR Directive into their national laws. Further, it should ensure that additional barriers are not created in terms of our attractiveness to foreign direct investment by not availing of the options regarding the disclosure of certain information.

We would welcome general guidance as to the meaning or examples of "*items of information ... where their disclosure would be seriously prejudicial to the commercial position of the undertakings to which the report relates*". However, in the interim, we understand that the term should refer to the information relating, for example, to impending developments or matters in the course of negotiation; commercially sensitive information (commercial and trade secrets/knowhow) and any other information that may put the company at the unfair competitive disadvantage and where its disclosure would significantly impact on the commercial position of the undertaking, and what a decision on items of information the disclosure of which would be "seriously prejudicial" should rest with the undertakings. Guidance on such principles, in so far as is practicable, should avoid differences in local interpretation. However, such guidance would need to take into consideration and recognise the fact that it will be companies themselves who are best placed to determine what would be "seriously prejudicial" to their circumstances and so guidance should be general on that basis.

There may be circumstances where it is necessary and desirable that entities should withhold certain information, owing to its commercial sensitivity. This is an accepted principle in international accounting standards, and we consider that it should apply here in certain circumstances.

We note that Article 19a (1) of the Directive 2014/95/EU<sup>3</sup> which amends Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, contains a similar “safe harbour” option where:

*“Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.”*

Article 48c (6) of the PCbCR Directive, while displaying similarities, gives less guidance to the Member States. The amending Directive does not dictate how the Member States should authorise the temporary exclusion. In our view such exclusion should not bring about additional unnecessary burdens and therefore consideration should be given to this being done on a self-assessment basis, supplemented by guidance where necessary.

The amending Directive does not dictate who decides which information should be temporarily omitted from the report. The Member State may therefore consider incorporating the wording of Article 19a (1) of the Directive 2014/95/EU and allowing the temporary omission of the *“items of information where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, their disclosure would be seriously prejudicial to the commercial position of the undertakings to which the report relates”*. We would recommend that any such assessment is also initially conducted by the designated management team of the undertaking and is based on a case-by-case and a period-by-period basis, focusing on the facts presented to the management team.

#### 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 2 – 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.**

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<sup>3</sup> Council Directive 2014/95 of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L330/1, Art. 19a (1). See also Art. 29a (1).

In our opinion, 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.

An option to exempt the undertaking from the publishing requirement where the information is already provided on the website of the CRO allows for greater efficiency by preventing duplication of effort on the part of the taxpayer with respect to information provided. Such an option would likely result in time and cost savings to the undertakings which could be deployed to develop and grow the business.

While public country-by-country reporting mechanism will increase corporate transparency and public scrutiny, we should seek to avoid overburdening businesses with duplicate reporting, where possible.

The Companies Registration Office is the central repository of public statutory information on Irish companies and business names. Many companies already provide certain information which is available to the public on the CRO's website. While some information is free of charge certain financial and ownership information is available for a fee. Such fees are fixed by the Minister for Enterprise, Trade and Employment having regard to the estimated cost of collection, production, reproduction, and dissemination of company information, which is a requirement under European law. In taking this option, the CRO should consider expanding the list of the information available to the public on the CRO website free of charge, to assist the undertakings with further reduction in the duplication of the reporting information.

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

We have no further comments to make at this time.