



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?

We would strongly support Ireland taking the option to allow for one or more specific items of information to be omitted where publication would be prejudicial to the commercial position of the company. Ibec believes this is crucial if undue damage to company's commercial standing is to be avoided.

There is a long list of variables considered when multinational companies choose where to place investments. Included in this are issues such as access to skills, country cost base, market access and regulatory risk. Public CBCR will see European companies and those operating within Europe exposed to higher regulatory and reputational risks than those operating solely outside the jurisdiction. Public CBCR could, for firms with European operations, make potentially sensitive data available to competitors who are not subject to the same regulations. In competition with sites in non-EU markets this will form a part of companies' decision-making process. In these circumstances, it is crucial that companies be allowed to avoid publishing very sensitive data in a manner which could lead to commercial losses to other jurisdictions.

This is a particular issue for new investments. Take for example an expanding company with a large presence within their home market investing in a European site or headquarters for the first time. In the case of this company public CBCR may reveal sensitive detail not only about the company's operations in general but about the specific site of operations in a country. In recent years a number of large multinationals in the software industry have located their EMEA offices in Dublin – where this is the case potentially sensitive site information will be made publicly available under CBCR. Companies in sectors such as Pharma and Medical Devices where site information is highly guarded even within company groups would be put at a disadvantage.

In addition, a number of companies raised concerns that public CBCR would particularly disadvantage those companies for whom public reporting was not already a significant part of their regulatory compliance. In private companies, who have traded easier access to capital markets for confidentiality and the ability to answer to long-term investors, they would have substantial regulatory and reputational risks along with added reporting costs under CBCR.

For example, private companies considering where they choose to invest in any non-EU country the competitive benefits of being a private firm would remain intact. Investing in Europe on the other hand would mean those benefits would be lost completely. Competitors would have access to information concerning their turnover, growth margins, employment patterns, productivity, accumulated earnings and a host of other commercially sensitive information. The potential damage this would do to Ireland's ability to win projects from some of the world's largest companies should not be underestimated.

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?

From purely the perspective of reducing administrative burden and avoiding duplication of effort this exemption would seem to make perfect sense. As such we are fully supportive of it.

Please indicate any general comments you may have.