



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.

No, we do not believe that Ireland should take the option to allow for specific items of information to be temporarily omitted from the report. The temporary nature of the measure places an additional administrative burden on both companies and the tax administration to monitor and enforce the subsequent disclosure of the omitted information. The related costs outweigh any uncertain benefit that undertakings may gain by initially omitting the disclosure.

In our view, circumstances where undertakings' commercial positions are seriously prejudiced by the disclosure of specific information – in the time-bound way as provided for in Article 48c(6) – are likely to be extremely rare.

However, we are concerned that certain disclosures, presented outside of context and without reconciliation to the financial statements, could lead to misinterpretation by the media and the public, and consequently prove prejudicial to the undertakings to which they relate.

Specifically, the amount of income tax paid on a cash basis (Article 48c (2)g) may have many components, including payments on account of the tax charge on the current year's profit, but may also include payments on account for the previous year and final settlement of previous years' liabilities including uncertain tax positions. Without a reconciliation between tax paid and the current tax expense for the current and relevant past periods for each individual undertaking, discrepancies will inevitably arise between the tax paid figure and the current tax expense (Article 48c(2)f). The provision in Article 48c(7) to allow for undertakings to include narrative explanations at a group level will not dispel misunderstandings on the part of the users of public CbC reports. This is because the discrepancies arise at a jurisdictional level, as the result of the differing tax collection regimes in place in each of the jurisdictions in which the undertaking operates: it is therefore not possible to explain the discrepancies at a consolidated group level.

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.

Yes, we would support the Member State option to exempt undertakings from the publishing requirement.

We support the drive for greater tax transparency from large multinational enterprises. However, under the current proposals, there is a risk that information may be taken out of context, and widely-available tax relief claims are misinterpreted as aggressive tax avoidance or evasion. The publication of information on the CRO's website will help to minimize this risk, as each undertaking's CbC information will be presented along with that of other undertakings – thus providing context and a basis for comparison.

Please indicate any general comments you may have.

ACCA fully supports the drive for greater transparency in corporate reporting, including reporting on tax. However, harmful tax practices (by both businesses and governments) will not be eliminated by forcing companies to make additional disclosures. Public CbCR will not help to crack down on cases of aggressive tax avoidance or evasion: that will be better achieved by effective collaborations between tax administrations to counter harmful tax practices, exchange information and take enforcement action.

Article 48b(7) requires undertakings and branches to comply with public CbCR requirements regardless of their size or the size of the group to which they belong, if they *'serve no other objective than to circumvent the reporting requirements set out in this Chapter.'* This is likely to be very difficult to enforce. The choice of business forms, including branches, is informed by multiple factors, and the avoidance of compliance burden is likely to be a common motive for many businesses. Therefore, it would be highly judgmental to either prove or disprove that circumventing public CbC reporting requirements is the sole motive for the setting up of an undertaking or branch. As we highlight above, while transparent corporate reporting is important to the public interest, it should not be conflated with more direct tax policy interventions to tackle aggressive tax avoidance or evasion.

The current CbCR proposals emerge at a time when significant developments are happening in the sphere of corporate reporting in the EU, with the proposed EU CSRD which will also soon be transposed in Ireland. It would be beneficial to align the aims of these important initiatives and assess their likely combined impact on companies and society.