In this article, Clive Jie-A-Joen and Rosalie van de Brug discuss the Public Country-by-Country Reporting Directive that enters into force on 21 December 2021.

Corporate Tax Transparency: The EU Directive on Public Country-by-Country Reporting Directive for Large Multinationals[1] enters into force

On 28 September 2021, the European Council adopted the proposed directive on the disclosure of income tax information by certain undertakings and branches (referred to as the public country-by-country reporting ("**CBCR**") directive ("**Public CBCR Directive**")). On 11 November 2021, the European Parliament approved this directive under which qualifying multinationals will need to publicly disclose the amount of tax paid in each EU country and other income tax information on their websites. The Public CBCR Directive was published in the EU Official Journal on 1 December 2021, which means that it enters into force on 21 December 2021.

For qualifying taxpayers with a calendar year, the financial year 2025 will be the first financial year for which the report on income tax information should be prepared. The report on income tax information shall be published within 12 months of the balance sheet date of the relevant financial year for which the report is prepared.

What is the Public CBCR Directive?

The Public CBCR Directive will require multinational enterprise ("**MNE**") groups that have a consolidated revenue exceeding EUR 750 million for each of the last two consecutive financial years and which are active in more than one country to prepare, publish and make accessible a report on income tax information with respect to the latter of those two consecutive financial years either if they are EU parented or have EU subsidiaries or branches of a certain size (medium-sized and large undertakings).[2]

Why Public CBCR Directive?

To implement the recommendations of action 13 of the OECD BEPS (base erosion and profit shifting) action plan in the EU, Council Directive 2016/881/EU already requires MNE groups located in the EU or with operations in the EU with consolidated revenue of at least EUR 750

[1] The members of the European Council are the heads of state or government of the 27 EU Member States, the European Council President and the President of the European Commission. The European Council defines the EU's overall political direction and priorities.
[2] See Article 3(3) and (4) of Directive 2013/34/EU for a definition of medium-sized and large undertakings, respectively.

million to file a country-by-country report (providing information on revenues, profits, income tax paid, income tax accrued, capital, earnings, tangible assets, and the number of employees on a country-by-country basis) to the relevant Member State competent authorities. This report is subject to automatic exchange of information between Member State competent authorities, which uses the information to assess tax risks and to allocate tax audit resources. In recent years, the European Commission, the European Parliament, and the European Council have been discussing proposals regarding the requirement to make country-by-country reports accessible to the public for scrutiny instead of tax authorities only.

In the context of the European Commission action plan for a fairer corporate tax system, the first proposed directive dates from 16 April 2016. Proposals for public CBCR faced some opposition and have been delayed due to disagreements on its legal basis. That is, should the proposal be based on qualified majority voting in the European Council (i.e., Article 50 of the Treaty on the Functioning of the European Union ("**TFEU**")) instead of unanimous approval by the European Council (i.e., Article 115 TFEU).

On 1 June 2021, the European Council reached a provisional agreement with the European Parliament on the introduction of public country-by-country rules in terms of a proposed compromise directive; the Public CBCR Directive. The European Council formally approved this Public CBCR Directive on the 28th of September 2021[3]. Under the CBCR, MNEs that are active in at least two countries and whose yearly consolidated income in each of the last two consecutive financial years exceeds EUR 750 million, are obliged to disclose information in each EU country and jurisdictions listed in the so-called EU list of non-cooperative jurisdictions for tax purposes (black or grey lists) in the form of CBCR. For other jurisdictions, reporting aggregated information is sufficient to meet the country-by-country requirements. It does not matter whether the headquarter is EU-based or not; MNEs doing business in the EU through subsidiaries and branches are also affected by CBCR.

With the Public CBCR Directive, qualifying MNE groups needs to demonstrate publicly that they pay tax where they operate. It aims to increase corporate tax transparency for large MNE groups and corporate responsibility to contribute to welfare through taxes. Transparency is considered essential for a smooth functioning of the internal market. The Public CBCR Directive

[3] Although the majority of Member States adopted the proposed Public CBCR Directive, Sweden and Cyprus voted against the proposed directive and Czech Republic, Ireland, Luxembourg and Malta abstained.

is also intended to enhance public scrutiny of the corporate income taxes borne by MNE groups, which will also result in a better informed public debate on tax compliance of qualifying MNE groups.

What information to disclose in Public CBCR Directive?

The relevant content of the report on income tax information shall consist for the relevant financial year:

a. The name of the ultimate parent undertaking or the standalone undertaking, the relevant financial year, the currency used, a list of all subsidiary undertakings consolidated in the financial statements of the ultimate parent undertaking, established in the European Union or in tax jurisdictions in the black and gray lists;
b. A brief description of the activities of their activities;
c. The number of employees on a full-time equivalent basis;
d. Revenues (to include transactions with related parties);
e. The amount of profit or loss before income tax;
f. The amount of income tax accrued;
g. The amount of income tax paid on a cash basis;
h. The amount of accumulated earnings;

The report on income tax information shall present the information separately for i) each Member State, ii) for each tax jurisdiction which is a listed In Annex I of the EU list of non-cooperative jurisdictions for tax purposes (black list)[4] and iii) for each tax jurisdiction mentioned in Annex II of the EU list (gray list)[5].

It is possible that Member States permit for certain elements of information to be omitted in the report on income tax information for a maximum of five years in case the publication of that information will seriously damage the commercial position of the relevant undertakings.

The European Commission will provide for a common electronic template and electronic reporting formats that can be used for presenting the information.

[4] Annex I included American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu. This version of Annex I has been approved by the European Council on 5 October 2021.

[5] Annex II includes Anguilla, Barbados, Botswana, Costa Rica, Dominica, Hong Kong, Jamaica, Jordan, Malaysia, North Macedonia, Qatar, Seychelles, Thailand, Turkey, and Uruguay. This version of Annex II has been approved by the European Council on 5 October 2021.

Publication and accessibility?

The deadline for publication is within twelve months of the balance sheet date of the financial year that has been covered by the report on income tax information. This report must be (free of charge) accessible on the website of the (subsidiary) undertaking, the branch or the undertaking that opened the branch in at least one of the official languages of the European Union (using a common template and in a machine-readable format). The report on income tax information must remain accessible for a period of at least five consecutive years.
Moreover, the statutory auditors and audit firm's accountant of the MNE is obliged to state whether an undertaking is required to publish a report on income tax information, and if so, whether this report has been published.

Who is responsible within the MNE Group?

Members of the administrative, management and supervisory bodies of the ultimate parent undertakings or the standalone undertakings have collective responsibility for making sure that the report on income tax information is drawn up, published, and made accessible according to the Public CBCR Directive.

Next steps?

On 1 December 2021, the text of the Public CBCR Directive was published in the Official Journal of the European Union as Directive (EU) 2021/2101.[6] The Public CBCR Directive enters into force on the 21st of December 2021, the 20th day following its publication in the Official Journal of the European Union. EU Member States should then incorporate the Public CBCR Directive into their national legislation by 22 June 2023.[7] Member States must ensure that the CBCR rules apply from the commencement date of the first financial year starting on or after 22 June 2024. For qualifying MNEs with a calendar year, the financial year 2025 will be the first reporting year for which the report on income tax information should be drawn up. The report shall then be made public available by 31 December 2016. However, Member States are allowed to start earlier. The new legislation contains a review clause providing that the public CBCR rules will be re-evaluated by 22 June 2027 and extended after an evaluation.

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[6] Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.

[7] Although the proposed Public CBCR Directive has been adopted by the European Council, our understanding is that its compatibility with EU law can still be challenged by Member States which disagreed with the legal basis of the CBCR Directive and voted against its approval.