Adoption of multinational enterprise group's public country-by-country report in EU and Latvia – new level of corporate transparency 2/39/23


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A directive requiring multinational enterprise (MNE) groups to prepare public country-by-country reports ("CbCR") was published in the EU Official Journal in December 2021. The member states had until 22 June 2023 to pass the directive into their national laws. In this series of articles we will look at the progress made by Latvia and other member states and will explore the directive's history, goals, potential benefits and taxpayer challenges.

The road to adoption of public CbCR

The fight against tax evasion and aggressive tax planning is a priority of the European Commission's policy. The EU has been carrying out various programmes and activities to ensure fair taxation, which means having companies pay a fair amount of tax in the country they make a profit.

The complex and sometimes mysterious tax rules have allowed certain MNEs to exploit some opaque flaws and discrepancies in EU tax systems. A study by the European Parliament estimates that corporate tax evasion annually costs the member states EUR 50–70 billion in budget revenues. Recent studies and investigations have discovered low taxes being paid by some MNEs. This causes public concern about the tax system's effectiveness and fairness.

The public CbCR initiative is the European Commission's response to intensive public calls for combining the transparency of corporate accounts and taxes actually paid with the need to protect the competitiveness of EU companies. Particular attention is paid to tax information on countries that ignore good governance standards. Public transparency of taxes is also a key component of corporate social responsibility, a hot topic in the international business space in recent years.

Key objectives and challenges

We have written before about the directive's areas, criteria, information to be disclosed and persons to disclose it. Its main goal is to improve public control over income tax information in companies by requiring MNE groups and certain businesses to publish reports on their revenues, income taxes and business operations in their country of residence and split by tax jurisdictions regardless of where the MNE group's ultimate holding company is registered.

Overall, the directive contains fairly tight guidelines on the taxpayer's obligations, while offering the member states a degree of discretion and interpretation that allows them to adjust and regulate the national implementation of the directive. The member states are free to choose the deadline for implementation and the effective date, which may be earlier than 22 June 2023 and 2024 specified by the directive respectively. Germany, Romania and the Netherlands, for example, passed the directive in 2022.

Yet the main option available to the member states is to allow companies to postpone the disclosure of particular information for a limited period of several years. The directive permits the member states to include rules on temporary suppression of one or more specified items of information if disclosing it is considered to "seriously harm" the group's commercial interests. However, any unpublished information must be publicly available no later than five years after its initial suppression.

The directive is silent on the exact items that may be suppressed and it imposes no time limits on such postponement. Also, the directive does not define the term "seriously harmful", allowing the member states to interpret and define it in different ways.

It's important to note that currently there are requirements in place for preparing CbCR. This report is not public and must be filed only with the tax authority if certain criteria are met. While the content and substance of non-public and public reports is very similar, there are some differences. The non-public report covers a wider area because it includes a condition that allows MNEs in particular circumstances to appoint a company that will file this report for the group. The directive prohibits groups from choosing the structure of reporting entities and provides that reports must be based on what is actually consolidated in their financial statements.

The directive also requires the member states to impose penalties and take all necessary steps to ensure they are enforced on taxpayers.

Progress in Latvia and the EU

The member states are taking fairly different approaches and attitudes to interpreting the directive and meeting its deadlines. Romania, for example, is seen as a trailblazer, having passed the directive on 1 September 2022 and put it into effect on 1 January 2023.

In an attempt to pass the directive, the Latvian parliament debated the Disclosure of Revenues and Income Taxes Bill in its second reading on 14 September 2023.

To continue this series, in the next article we will explore how the directive is being implemented in Latvia, what ideas Latvian taxpayers should take on board, and what risks they might face.