

ATOZ ALERT

New step towards the adoption of the public country-by-country reporting (CBCR) directive

4 June 2021

On 1st June, the EU Council reached a provisional political agreement with the European Parliament's negotiating team on 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.

Scope of the disclosure obligations under the proposed CBCR directive

Under the proposed public CBCR directive, EU multinational enterprises or standalone undertakings with a total consolidated revenue of more than €750 million in each of the last two consecutive financial years, whether headquartered in the EU or not, would be obliged to publicly disclose income tax information. The proposal does not impose any obligations on small and medium-sized companies. As the aim of the directive proposal is to allow the public to scrutinise all the activities of a group when the group has certain establishments within the Union, groups which carry out activities within the Union only through subsidiary undertakings or branches are also targeted, to some extent, by the proposal.

As a result, as from 2023, large MNEs would be required to publish a defined set of facts and figures, thereby providing the public with a global picture of the taxes MNEs pay on their corporate income. Amongst those figures there would be a brief description of the nature of the activities, the average number of employees during the financial year, revenues, the amount of profit or loss before income tax, the amount of income tax accrued, the amount of income tax paid on cash basis, and the amount of accumulated earnings at the end of the relevant financial year.

Such information would be presented in relation to each EU member state separately, as well as to each third country considered as "non-cooperative". Non-cooperative jurisdictions are the ones listed in Annex I of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes or listed for two consecutive years in Annex II of these Council conclusions.

The reporting would take place within twelve months from the date of the balance sheet of the financial year in question. A common EU template and machine-readable electronic formats would be available for the purpose of such reporting.

As it is recognised that publicly disclosing data to be included in reports on income tax information could in certain cases be seriously prejudicial to the commercial position of an undertaking, the directive proposal sets out conditions under which an MNE could obtain the deferral of the disclosure of certain elements for a maximum of five years. For that purpose, they would have to clearly disclose the deferral and give a reasoned explanation for it in the report and document the basis for the reasoning.

Next steps

The provisionally agreed text will now be submitted to the relevant bodies of the Council and of the European Parliament for political endorsement. If such endorsement takes place, the Council will adopt its position at first reading on the basis of the agreed text. The European Parliament should then approve that Council's position and the directive will be deemed to have been adopted.

We will closely follow the legislative procedure related to this proposal, which still needs to address a complex set of legal, EU competitiveness and trade issues.

Do you have further questions?



KEITH O'DONNELL

Managing Partner,
International & Corporate Tax
keith.odonnell@atoz.lu
T + 352 26 940 257



MARIE BENTLEY

Knowledge Director
marie.bentley@atoz.lu
T +352 26 940 903