

Romania introduces EU public country-by-country reporting legislation

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In brief

The Romanian Government recently formally introduced the EU public country-by-country (CbC) requirements, transposing into the national legislation the provisions of EU Directive 2021/2101.

Order 2048/2022 requires qualifying Romanian-based multinational enterprises and multinational enterprises with subsidiaries or branches in Romania, irrespective of whether these are EU or non-EU headquartered groups, to publicly disclose certain information on a country-by-country basis. The threshold of the annual consolidated revenue is of RON 3.7 billion (equivalent of EUR 747,474,740) in each of the last two consecutive financial years.

Observation: The legislation is effective starting January 1, 2023 and applies to financial years beginning on or after January 1, 2023, which is earlier than the June 22, 2024 deadline set by the EU Directive. Following these amendments, Romania becomes the first EU Member State to officially introduce public CbC reporting obligations, with a deadline for the CbC preparation and public disclosure significantly earlier than that set by the EU Directive.

Action item: Qualifying multinational enterprises operating in Romania and Romanian-headquartered groups should be preparing the required CbC disclosure and consider how their CbC data may be interpreted. Complying with the additional public CbC requirements should be considered in the broader context of a group's overall tax strategy and tax governance. Given the increased public disclosure regarding a group's tax position and potential impact on interested stakeholders, including investors and NGOs, companies should start now to develop their tax transparency strategy.

In detail

The new legislation is broadly in line with the EU Directive. Key requirements provided under Order 2048/2022 are highlighted below.

Responsibility for making the information publicly available

The responsibility for the public CbC reporting rests with:

- The Romanian ultimate parent companies of groups with total consolidated revenues exceeding RON 3.7 billion (the equivalent of EUR 747,474,740) for each of the last two consecutive financial years, active in more than one fiscal jurisdiction.

- The Romanian subsidiaries (medium and large) and qualifying branches of non-Romanian ultimate parent companies (no distinction made between EU or non-EU) of groups with total consolidated revenues exceeding RON 3.7 billion (the equivalent of EUR 747,474,740) for each of the last two consecutive financial years.

Note: Medium and large subsidiaries are those entities that exceed at least two of the following criteria at total balance sheet level: 1) total assets of EUR 4 million, 2) net turnover of EUR 8 million, and 3) average number of employees during the financial year: 50.

Note: Branches subject to public CbC reporting are those established by entities not covered by the legislation of an EU Member State and whose consolidated net turnover has exceeded — for each of the last two consecutive financial years — the amount of RON 3.7 billion or a stand-alone entity whose net turnover has exceeded at the balance sheet date, for each of the last two consecutive financial years, the amount of RON 3.7 billion. The reporting obligation applies only to branches whose turnover exceeds EUR 35,000,000 Lei for each of the last two consecutive financial years.

The Romanian subsidiaries or branches identified above should publish and make accessible a report prepared by the ultimate parent company. If they do not have access to this report, they should request from the parent all the information necessary to enable the subsidiary or branch to meet its obligation.

If the ultimate parent does not provide all required information to the subsidiary or branch, the Romanian subsidiary or branch should prepare, publish, and provide access to a report on income tax information, containing all information in its possession, obtained or acquired, and a statement that the ultimate parent did not make the necessary information available.

Information to be publicly disclosed

The information to be disclosed includes:

- The name of the ultimate parent company or the stand-alone entity, the financial year concerned, and the currency used for the presentation of the report.
- A brief description of the nature of the activities.
- The number of employees.
- The total net revenue.
- The gross profit or loss.
- The amount of income tax accrued during the relevant financial year.
- The amount of tax paid on a cash basis.
- The amount of accumulated earnings at the end of the relevant financial year.

The above data should be made publicly available as follows:

- Separately for each European Member State.
- Separately for each fiscal jurisdiction included as of March 1 of the financial year subject to reporting in Annex I of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes.
- Separately for each fiscal jurisdiction included as of March 1 of the financial year subject to reporting, as well as in the previous year, in Annex II of the Council conclusions on the EU list of noncooperative jurisdictions for tax purposes.
- On an aggregate basis for all other tax jurisdictions.

The information is to be presented using a common template and electronic reporting formats that are machine-readable. Additionally, the information may be reported on the basis of the reporting instructions referred to in Section III, Parts B and C of Annex III to Council Directive 2011/16/EU, as transposed into national law.

Deferral of disclosing certain information

Romania allows for one or more specific items of information to be temporarily omitted from the report where the disclosure would be seriously prejudicial to the commercial position of the entities to which the report relates. Any omission must be clearly indicated in the report, along with a duly reasoned explanation.

However, any information omitted must be made public in a later report no more than five years from the date of its original omission.

Information pertaining to the tax jurisdictions listed on the EU list of noncooperative jurisdictions are not subject to this deferral mechanism.

Timing

The legislation is effective starting January 1, 2023 and applies to financial years beginning on or after January 1, 2023. Entities that have chosen a financial year other than the calendar year are to apply these provisions from the beginning of the first financial year thus chosen, starting after January 1, 2023.

Reporting is required within 12 months of the financial year-end and shall remain accessible for a period of at least five consecutive years.

Availability

The CbC reporting must be made available free-of-charge, in Romanian, on the official website of the required entity. An exemption is provided for cases where the reporting is done free-of-charge on the website of the relevant Trade Register. If an exemption applies, the required entity still will have the obligation to indicate on its official website information on that exemption and the reference to the website of the relevant Register.

Statutory audit requirements

Where there is an obligation to produce audited annual financial statements, the audit report must determine whether — for the financial year preceding the financial year for which the audited financial statements were prepared — the entity was required to publish a report on income tax information and if the obligation was met.

Penalties

Penalties for noncompliance with public CbC disclosure have not been introduced yet. Measures to enforce such penalties are expected to be taken in the next period.

Let's talk

For a deeper discussion of how Romania's new CbCR requirement might affect your business, please contact:

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