

European Directive requiring publication of country-by-country information transposed into Spanish law

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In brief

Spain published on December 22, 2022, in the Spanish Official State Gazette, Law 28/2022, which introduces the obligation for certain companies and branches established in Spanish territory to publish certain information relating to corporate income tax (country-by-country (CbC) report).

Through this law, the Spanish legislator transposed into domestic legislation the content of EU Directive 2021/2101 of November 24, 2021, which amends EU Directive 2013/34 with regard to the disclosure of information relating to corporate income tax by certain companies and branches, and which represents a substantial increase in reporting obligations for large multinational groups.

Action item: The new obligation may have a significant impact on multinationals with presence in Spain. Accordingly, multinationals should analyze and anticipate the potential implications that may arise as a result of the information reported — not only from the tax authorities, but also from investors, creditors, or the general public — once access to the information becomes public.

Observation: Romania already has moved forward with the transposition of the European Directive, requiring the publication of the CbC information for fiscal years starting as of January 1, 2023. Therefore, multinational groups with presence in that jurisdiction may have to comply with this obligation before it is required by Spanish law. (See [PwC's Tax Insight](#).)

In detail

Who is obligated?

The new obligation will apply to (1) parent companies of multinational groups established in Spain (ultimate parent companies), and (2) Spanish subsidiaries and branches of multinational groups whose ultimate parent company is established outside of the European Union (EU), whose turnover exceeds EUR 750 million during the last two consecutive tax periods, based on consolidated financial information. The obligation is extended to those entities whose turnover amount exceeds the EUR 750 million threshold during the last two consecutive tax periods but that do not belong to a group, in accordance with the applicable regulations.

The following taxpayers will be exempt from this new obligation:

- Groups and entities that are established exclusively in another Member State of the EU.
- Subsidiaries and branches whose ultimate parent company is established outside of the EU, in which their ultimate parent company already published a CbC report that is aligned in terms of content and accessibility with those established by Spanish regulations. In cases where subsidiaries and branches cannot access the complete CbC information of their multinational group, they must publish the information available to them, indicating that their ultimate parent company has not made the complete information available.
- Credit institutions that meet with the provisions of art. 87 of Law 10/2014, of June 26, related to the regulation, supervision, and solvency of credit institutions.

Required content

This new obligation, similar in content to the CbC report currently in force as a result of the BEPS Action Plan, requires that relevant information on the composition and activities of the multinational group, the number of employees, revenues and profits earned, taxes accrued and paid, and reserves in the financial year relating to the most recent of the two financial years in which the EUR 750 million threshold is met must be disclosed on the Group's website and in the annual accounts.

The information must be disclosed separately for EU Member States and for jurisdictions classified as noncooperative by the EU, and on an aggregate basis for other jurisdictions. In particular, multinational groups must disclose the information of jurisdictions listed in the so-called "blacklist," among which Panama and Trinidad and Tobago are included, and jurisdictions listed for more than two years on the "grey list," which currently includes Costa Rica, Thailand, Malaysia, Hong-Kong SAR, Uruguay, and Turkey.

Timeline

The obligation to report public CbC information will apply for fiscal years starting on or after June 22, 2024, in line with the deadline set forth in the EU Directive. The information must be published within six months from the fiscal year-end in which information is published. Similarly, the CbC information shall be registered in the Commercial Register, together with the financial annual accounts. Country-by-country information must be available for at least five consecutive years.

How information must be presented and published

The information must be prepared in any of the official languages of the EU and submitted using a common template and automatic-readable electronic formats, to be established by the European Commission.

The public CbC Report must be published on the corporate website of the multinational groups, entities, and branches falling within the scope of the standard.

Responsible member for reporting compliance obligation

The regulations expressly state that the members of the management bodies of the ultimate parent company or of the obliged subsidiary, and the staff responsible for complying with the disclosure of formalities in relation to the branches, are collectively responsible for making sure that CbC information is made public under the terms provided.

Confidentiality of data

For cases in which disclosure is deemed seriously prejudicial to the commercial position of the companies covered by the report, Member States may allow one or more items of information to be temporarily omitted from the report.

Any omission must be clearly stated in the report and must be accompanied by a duly substantiated justification. The omitted information must be disclosed in a subsequent report within five years after its initial omission.

Information relating to jurisdictions classified as “non-cooperative” must not be omitted.

The new obligation in the international framework

The initiative to make certain that tax and financial information is accessible and transparent on a CbC basis has existed since 2016, with the entry into force and publication of Form 231. Although currently not public, the information in the CbC Report is automatically shared between most of the jurisdictions involved through several agreements for the automatic exchange of such information.

In addition, the Spanish tax agency publishes an annual [country-by-country information analysis report](#) which contains aggregated and anonymous information on the CbC reports filed by the parent companies of Spanish groups.

Observation: Spanish companies already were required by Law 11/2018, which regulates the Statement of Non-Financial Information, to disclose relevant information on a country-by-country basis, albeit considerably less detail was required.

Other standards may apply, such as the Global Reporting Initiative (GRI), whereby multinational groups and companies may opt to disclose relevant information on a CbC basis.

Below is a comparative table with the information to be included in (1) the CbC Report in accordance with article 14 of the Corporate Income Tax Regulation, (2) the Statement of Non-Financial Information, (3) the public CbC Report in accordance with the new Law 28/2022, and (4) the GRI207/4 standards:

	1 Country - by - country report (Art. 14 RIS)	2 Non-financial information statement	3 Public Country – by - country report	4 GRI 207/4
MANDATORY	✓	✓	✓	✗
PUBLIC INFORMATION	✗	✓	✓	✓
CONTENTS				
Gross income	✓	✓	✓	✓
Income with related parties	✓	✗	✗	✗
Income with third parties	✓	✗	✗	✗
Profit before tax	✓	✓	✓	✓
Corporate income tax paid	✓	✓	✓	✓
Corporate income tax accrued	✓	✗	✓	✓
Capital	✓	✗	✗	✗
Reserves (profit from previous years and accumulated earnings)	✓	✗	✓	✗
Number of employees	✓	✗	✓	✓

	1	2	3	4
	Country - by - country report (Art. 14 RIS)	Non-financial information statement	Public Country – by - country report	GRI 207/4
Tangible assets	✓	✗	✗	✓
Explanation of the difference between the effective rate and nominal rate	✗	✗	✓	✓
Subsidies	✗	✓	✗	✗

Let's talk

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

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