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German Tax and Legal News

Government approves draft legislation to implement EU public country-by-country reporting directive into German domestic law

Approved draft bill is in line with requirements described in EU directive.

The German government approved draft legislation on 7 December 2022 to implement the provisions of the EU public country-by-country (CbC) reporting directive into German domestic legislation. Public CbC reporting is aimed at disclosing to the general public certain tax-related information on a country-by-country basis for fiscal years (FYs) starting on or after 22 June 2024 (i.e., FY 25 and subsequent years). As described further below, the proposed German public CbC reporting rules are in line with the requirements set forth in the EU directive, but the scope of the rules differs from the scope of the existing German (non-public) CbC reporting rules in some respects.

Background

Based on [OECD BEPS action item 13](#), large multinational enterprises (MNEs) with consolidated revenue exceeding EUR 750 million are subject to CbC reporting under the OECD recommendations. In 2016, the EU issued [EU directive 2016/881](#) to implement (non-public) CbC reporting within the EU for FYs starting after 31 December 2015. The original CbC reporting rules, however, did not provide for public reporting; an initial EU proposal from 2016 in this regard was not successful (mostly due to disagreements between EU member states on its legal basis). Following a change of position by certain EU member states, [EU directive 2021/2101](#) providing for public EU CbC reporting was officially published on 1 December 2021 and entered into force on 21 December 2021. EU member states have until 22 June 2023 to transpose the directive into domestic law. The German legislature is planning to implement the provisions of the directive in the German Commercial Code, rather than in a tax code.

Scope and application of rules

The scope of the proposed German rules to implement the EU public CbC reporting requirements is similar to that of the existing rules for CbC reporting that are based on the OECD recommendations, as set forth in section 138a of the German General Tax Code; however, there are certain differences. One difference is that for German-based standalone companies and ultimate parent entities (UPEs) of multinational groups, the public CbC reporting rules would apply in cases where consolidated revenue exceeds EUR 750 million in each of the two preceding FYs (instead of only the immediately preceding FY, as provided in the existing rules). In addition, the reporting obligation would apply not only to standalone companies and UPEs located in Germany (which already are covered by section 138a of the General Tax Code), but also to MNEs active in third jurisdictions (i.e., non-EU jurisdictions) that are doing business in Germany through a subsidiary or branch. In a case where such a company resident in a third jurisdiction has a German subsidiary, the EUR 750 million consolidated revenue threshold would apply; in addition, the German subsidiary would have to qualify as a large or medium-sized company under section 267 of the German Commercial Code. In a case where the company resident in a third jurisdiction is doing business through a German branch, the public CbC reporting rules would apply if the company resident in a third jurisdiction is a corporation and the revenue of the German branch exceeds EUR 12 million in the two consecutive preceding FYs. The reporting obligation also would apply for German subsidiaries or branches that are established for the sole purpose of circumventing the EU public CbC reporting requirements.

Exceptions from the EU public CbC reporting requirements would apply for fully licensed banks ("CRR credit institutions"), provided they publish certain information based on [EU directive 2013/36](#) ("Capital Requirements Directive IV").

The data and information to be included in the annual EU public CbC reports would include the following, among other things:

- Name of the company;
- Brief description of the nature of its activities;
- Number of employees;
- Net sales;
- Profit or loss before tax;
- Income taxes due based on the current year's profit earned in the relevant country;
- Income taxes paid in the relevant country in the current year; and
- Amount of undistributed profits.

The EU public CbC reports would be published separately for each EU/European Economic Area member state and each jurisdiction included in "Annex I" or "Annex II" to the [EU list of noncooperative jurisdictions for tax purposes on 1 March](#) of the relevant reporting period; for jurisdictions included in "Annex II," however, data would be published separately only if the relevant jurisdiction is included in the list on both 1 March of the relevant reporting period and 1 March of the preceding year. For all other jurisdictions ("rest of world"), data could be aggregated.

EU public CbC reporting data and information would need to be prepared using a common template and electronic reporting formats (yet to be developed and published by the EU) that are machine-readable; the report would need to be published within 12 months from the balance sheet date of the FY for which the public CbC reporting is provided. The report would need to be made accessible—free of charge—to the public in at least one of the EU official languages no later than 12 months after the balance sheet date on a website of either the UPE, a delegated subsidiary, or the publishing branch or subsidiary. The EU public CbC reports would have to be accessible on the website for a minimum of five consecutive years. Management would have collective responsibility for the report being set up, published, and accessible.

For non-EU headquartered companies, each EU subsidiary or EU branch would have to publish the EU public CbC reporting information of the group parent company, subject to certain exceptions. Alternatively, the non-EU parent company would be able to publish the information itself on a public website and then assign the obligation to file the report with a national trade registry to one of its EU group entities. Germany has included this "safeguard clause" in its proposed implementation legislation. This would give non-EU headquartered companies with a qualifying German subsidiary or branch the ability to assign the EU filing obligation to the German subsidiary or branch, which would help avoid a multitude of EU public CbC reporting information filings.

The proposed German implementation legislation allows for two practical disclosure approaches: EU public CbC reports would be able to be published either on a standalone basis (i.e., as a new disclosure to the general public, similar to the publication of financial statements) or as an integrated EU public CbC report (e.g., in "sustainability" and/or "environment/social/governance" (ESG) reporting).

An EU public CbC report that is not prepared, not prepared correctly, not prepared in full, and/or not submitted by the due date would be subject to a fine of up to EUR 200,000.

Apart from the required public disclosure of the EU public CbC reporting data, the extended scope of the proposed rules could result in an increased administrative burden for affected MNEs. Due to the potential risk of misinterpretation of the published data by the general public, affected taxpayers may wish to supplement the published data with additional information and explanations. Affected taxpayers should analyze what data would need to be published and how the data could be explained to the general public (if required).

The proposed implementation bill still must enter into the regular legislative process and be approved by the upper and lower houses of parliament. It can be expected that this will occur before 22 June 2023.

Your Contacts

Andreas Maywald

Client Service Executive | ICE - German Tax Desk

anmaywald@deloitte.com

Tel.: +1 212 436 7487

Dr. Andreas Kowallik

Partner

akowallik@deloitte.de

Tel.: +49 89 29036 8684

Steffen Möller

Manager

stmoeller@deloitte.de

Tel.: +49 89 29036 6603

Jakob Enk

Consultant

jaenk@deloitte.de

Tel.: +49 211 8772 4758

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