

Public reporting of information related to Corporate income Tax, for jurisdictions where it is transposed into local legislation

Starting from 1 January 2023, following the implementation of EU Directive 2021/2201 ("The Directive") into Romanian legislation (Order no. 2048/2022 issued by the Ministry of Public Finance), the provisions related to the public reporting of information on Corporate Income Tax enter into force.

Main provisions

In other words, not only companies which are part of groups, but also standalone entities, must prepare, publish and give access to a report containing information on corporate income tax. This public reporting requirement relating to the corporate income tax paid in each jurisdiction, applies, according to Romanian legislation, starting with the 2023 financial year, or starting with the first financial year beginning after 1 January 2023 (in the case of entities which opted for a financial year different from the calendar one). The reports published by companies in Romania, which are part of a group, must include details of the activity of the entire group, and not only the activity carried out in Romania.

Thus, the requirement to prepare and publish the Country-by-Country Report ("the report") concerning corporate income tax, in the 12 months from the date of the balance sheet for which the report is prepared, according to legislative provisions, applies to the following types of entity:

- Ultimate parent companies;
- Standalone entities;
- Medium-sized and large subsidiaries, which are controlled by an ultimate parent which does not fall under the present legislative requirements;
- Branches set up in Romania by companies which do not fall under the governance of a law of an EU Member State.

Generally speaking, the criterion which triggers the applicability of the reporting requirement is to have a **consolidated annual net turnover (for groups of companies), at the balance sheet date, of more than 3,700,000,000 RON (equivalent to 747,474,740 EUR, calculated using the 21 December 2021 exchange rate), for two consecutive financial years**. If this criterion is fulfilled, then the requirement to prepare and to publish the report applies with respect to the last financial year (of the two) for which the criterion is fulfilled.

In addition, there are also specific criteria set out in legislation to determine the medium subsidiaries, the large subsidiaries and the branches which fall under the reporting requirement. These criteria are in correlation with the provisions of EU Directive 2013/34 and also with the applicable accounting requirements in Romania.

With reference to the implementation of the Directive in Romanian legislation, we mention the following aspects:

- The Directive states that the reporting of the information related to corporate income tax, should **start at the beginning of the financial year commencing on or after 22 June 2024, at the latest**. However, in the Romanian legislation, the date when the reporting requirement enters into force is 1 January 2023, and hence differs from the text of the Directive. Consequently, public reporting requirements are introduced earlier in Romania than the deadline set in the Directive. (For instance, for a group whose financial year is the same as the calendar year, the reporting requirement in Romania is applicable starting with the financial statements for FY2023, whereas, according to the text of the Directive, the first reportable financial year would have been 2025).
- The legislative text applied in Romania refers to information from EU Member States, as well as from jurisdictions which are defined as non-cooperative for tax purposes, according to the revised list of the Council of the European Union. For all other tax jurisdictions, which are not members of the European Union and in which a group carries out its activities, an aggregate presentation is required.

At the same time, we note that, based on the provisions of the Directive, the Romanian legislation provides for the possibility for certain information related to corporate income tax to be omitted, if such reporting causes major commercial prejudice to the companies in question. Nevertheless, an omission of data needs, to be presented and justified in the report. Furthermore, an omission may only be temporary, since in no more than five years from the omission, the related data must be made public in a future report.

Last but not least, in situations when the information on corporate income tax is not available to branches, medium subsidiaries and large subsidiaries and hence they are not able to publish a full report on corporate income tax, we highlight the following:

- A report on corporate income tax should be prepared and published by the relevant entity to the best of its ability, and should be based on the information that is available to the entity; and
- The entity should prepare a statement explaining that the ultimate parent company did not provide the necessary information for reporting purposes.

These measures form part of a continuing effort to improve tax transparency at European Union level, based on the provision of detailed information, by extending the reporting obligation to information which was previously reported only to the fiscal authorities.

The provisions of Order 2048/2022 are not applicable to financial institutions which are under the oversight and regulation of the National Bank of Romania and of the Financial Supervisory Authority (ASF), since the implementation of the Directive for these organizations will be carried out under separate legislation.

Aspects requiring clarification

We believe that certain wordings used in the Order transposing the European Directive into local legislation could generate various possible interpretations, thus leading to potential divergences from the text of the Directive.

Consequently, there are a number of issues which the Romanian tax authorities need to clarify:

- *The differences should be resolved between the provisions referring to the first financial year falling under the reporting requirement according the Romanian legislation, and according to the Directive.* As we previously mentioned, a possible interpretation of the current provisions of Order 2048/2022 is that the first financial year for which the reporting requirement applies in Romania is 2023, meaning two years earlier than the period mentioned by the Directive as being the first financial year subject to reporting;
- *The extent to which the reporting obligation in Romania applies to Romanian subsidiaries controlled by an ultimate parent-company established in another EU Member State should be clarified.* In the



case of groups controlled by an ultimate parent company established in another EU Member State, the reporting requirement, according to the Directive, belongs to the ultimate-parent company and not to its subsidiaries in other EU Member States. The Directive introduces the reporting requirement only for subsidiaries “controlled by an ultimate parent-company which does not fall under the legislation of a Member State.” The implementing legislation in Romania is unclear and may lead to the interpretation that it introduces a reporting requirement for all Romanian subsidiaries controlled by an ultimate parent-company established in a state other than Romania (including EU Member States);

- *Clarifications should be made with respect to the interpretation of certain provisions, in order to have a uniform approach to the application of the Directive's provisions, as implemented into local law. Further details are needed with respect to the application of certain provisions (for example: details concerning the major prejudice that may be caused to a company's commercial position as a result of publishing the information required by the Directive, as well as with respect to the manner in which the risk of such prejudice may be demonstrated).*

KPMG can help your organization to meet the new requirements

Multinational companies (whether they have EU based or non-EU based ultimate parent companies) should consider whether they fall within the scope of the new rules on the so-called public Country-by-Country reporting (“public CbC”), as implemented in Romania. Multinational companies which fall under these obligations should also build on the current Country-by-Country reporting process (“private CbC”).

We strongly believe that, besides the quantitative reporting required by the new public EU CbC rules, the complementary qualitative aspects of publicly reported data are equally important, as these ensure increased tax transparency towards stakeholders and society as a whole.

KPMG in Romania's tax professionals have detailed experience of supporting companies with their tax reporting and can help your company comply with the new legislation. Our specialized team (KPMG Tax Impact Reporting) can assist your tax department with respect to the data driven methodologies which can be used to accurately extract and compile the necessary information related to the Corporate Income Tax (“Public CbC”) report, as well as related to your tax footprint, while providing assistance throughout the entire reporting process, taking full advantage of high quality technological solutions.

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