

Corporate income tax reporting obligation (public CbC)

Tax Alert



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Corporate income tax reporting obligation (public CbC). Approval of a common template and electronic filing formats

Directive (EU) 2021/2101 of 24 November 2021 laid down a new Europe-wide obligation requiring certain undertakings and branches to disclose information on Corporate Income Tax. This measure affects EU-based groups and single corporations with revenues exceeding Euros 750 million in financial years commencing on or after 22 June 2024. In Spain, this obligation -also known as public country-by-country reporting- was introduced by means of Law 28/2022 of 21 December 2022 (the “Start-ups Law”), which amended Audit Law 22/2015 of 20 July 2015.

To facilitate compliance with this obligation, Commission Implementing Regulation (EU) 2024/2952 of 29 November 2024 has approved the common template and electronic formats in which the information referred is to be reported, applicable to reports for financial years starting on or after 1 January 2025.

Introduction

Additional provision eleven of the Audit Law provides that certain undertakings and branches must **draw up and publish a report on Corporate Income Tax information** -or information on taxes of an identical or similar nature- **as of the first financial year commencing on or after 22 June 2024**.

This report must include information on the undertaking’s activities, number of employees, revenues, profit or loss, taxes accrued and paid and accumulated earnings, broken down by each Member State in which the entity operates. Where a Member State comprises several tax jurisdictions, the information shall be aggregated at Member State level.

Under the relevant legislation, the report must be approved and published within six months of the end of the financial year in question and filed at the Mercantile Registry together with the Statutory Annual Accounts. Moreover, it must be accessible on the entity’s website, free of charge, for at least five consecutive years.

The information must be reported using a common template, in one of the machine-readable electronic formats developed by the European Commission.

In this connection, [Implementing Regulation \(EU\) 2024/2952](#), published in the OJEU on 2 December 2024, specifies the template and reporting formats applicable to reports for financial years starting on or after 1 January 2025.

Domestic law and the European Directive

The Spanish legislation has been approved as a transposition of the European Directive. However, while the latter provides that the report must be published no later than 12 months after the closing of the balance sheet, **Spanish lawmakers have opted for a six-month approval period**, in line with the time limits laid

down in the Commercial Code for the approval and publication of the Statutory Annual Accounts.

Furthermore, in Spain the obligation also includes the filing of the report at the Mercantile Registry.

What does this new reporting obligation entail?

The entities, subsidiaries and branches subject to the obligation are **primarily required** to draw up and publish on their website -free of charge- a report on Corporate Income Tax (or similar) information, relating to the latter of the last two financial years. This report must also be filed at the Mercantile Registry, together with the documents making up the Statutory Annual Accounts.

Where the subsidiary or branch is unable to access the required information, it should draw up, publish, file and make accessible a report using all the available data. They are also required to include a statement indicating that the parent company or the entity not forming part of a group (single entity), as the case may be, did not make all of the necessary information available.

Entities covered by this obligation

The following entities are covered by the reporting obligation:

- **Ultimate parent companies of groups that:** a) are governed by Spanish law; b) file consolidated annual accounts; and c) have posted consolidated revenues exceeding Euros 750 million for each of the last two consecutive financial years.

Such parent undertakings will cease to be subject to this obligation where, at the balance sheet date, consolidated revenues for each of the last two consecutive financial years fall below Euros 750 million, per their consolidated financial statements.

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- **Single entities** with revenues exceeding Euros 750 million for each of the last two consecutive financial years, per their Annual Financial Statements.

Such entities will no longer be required to report this information where their revenues for each of the last two financial years fall below Euros 750 million, per their financial statements.

- **Spanish subsidiaries** controlled by ultimate parent companies not subject to the law of an EU Member State:

- a. with consolidated revenues exceeding Euros 750 million for each of the last two consecutive financial years, per their consolidated Financial Statements.
- b. which are not classified as “small entities” per article 3 of the Audit Law.

The obligation will cease to apply where, at the balance sheet date, the consolidated revenues of the ultimate parent company for each of the last two consecutive financial years fall below Euros 750 million.

As explained below, Spanish subsidiaries controlled by ultimate parent companies not subject to the laws of an EU Member State may be eligible for an exemption, provided the reporting obligation is fulfilled in another EU country.

- **Branches established in Spain by companies not subject to the laws of an EU Member State** provided:

- a. The company establishing the branch is: (i) a subsidiary of a group whose ultimate parent company is not subject to the laws of an EU Member State and which posted consolidated revenues exceeding Euros 750 for each of the last two consecutive financial years; or (ii) a company that does not belong to a group posting such revenues in the same financial years.
- b. The ultimate parent company does not have a subsidiary that is already subject to such obligation; or
- c. It is not classified as a “small entity” per article 3 of the Audit Law.

- **Subsidiaries and branches set up for avoidance purposes alone**

Subsidiaries or branches established for the sole purpose of avoiding this reporting obligation shall be subject to the same rules.

Exemptions from the obligation

The following entities are exempt:

- A. **Subsidiaries and branches of ultimate parent companies not subject to EU law**, provided that the report on Corporate Income Tax information has already been drawn up by an **ultimate parent company or single company not subject to EU law**, the content of the report is compatible with that regulated by Spanish legislation and, moreover:

- i. The report is made accessible to the public, free of charge, and is in an electronic reporting format which is machine-readable.
- ii. It is published on the **website** of the ultimate parent company or of the single company.
- iii. It is published in one of the official languages of the EU.
- iv. It is published **no later than six months** after the closing of the balance sheet of the financial year for which the report is drawn up.
- v. The report identifies the name and the registered office of a single subsidiary, or the name and the address of a single branch governed by EU law, which has published a report in accordance with this legislation.

This exemption is particularly important for multinational groups with non-EU parents, as it exonerates them from the obligation to draw up and publish a specific report in Spain.

However, the fact that Spain has reduced the publication deadline to six months -lower than 12 months provided for in the European Directive- could be a practical difficulty.

- B. **Groups and companies operating exclusively in a single EU Member State.**

Groups or companies that are established or have their registered office or permanent business activities in just one European Union Member State.

C. Credit institutions that publish the report provided for in article 87 of Law 10/2014.

Such institutions are exempt, provided:

- The report includes information on all of their activities.
- In the event that they are ultimate parent companies, the report covers the activities of all of the subsidiaries included in their consolidated financial statements.

Contents of the report

The report aims to disclose the composition and nature of the activities, number of employees, revenues, profit or loss before corporate income tax, corporate income tax or tax with a similar nature accrued and paid, and accumulated earnings at the end of the financial year in question (these items are detailed in the legislation).

Basis for reporting the information

The information may be reported on the basis of the instructions set out in article 14 of the Corporate Income Tax Regulations ("CIT Regulations") and Ministry of Finance and Civil Service Order HFP/1978/2016 of 28 December 2016, approving country-by-country reporting form 231.

Presentation of the information

The information must be disclosed as follows:

- Separately for each Member State (including their domestic tax territories in aggregate basis).
- Separately for territories included on the European Council's EU list of non-cooperative jurisdictions for tax purposes.
- In aggregate basis for other tax jurisdictions.

Information should be allocated based on the registered office or the existence of a permanent business activity in the specific territory.

Reporting currency

As a general rule, the information must be reported in the currency used in the consolidated financial statements of the ultimate parent company or, in the case of single entities, in the currency used in their individual financial statements.

Where this information is not available, subsidiaries subject to the reporting obligation must use the

currency in which they publish their annual financial statements.

Method of and deadline for disclosure of the necessary information

The information must be approved **no later than six months after the end of the reporting period**. It must be disclosed on the website of the parent company, subsidiary or branch (or that of parent entity that incorporated them, as the case may be) and remain accessible on the relevant website for at least five consecutive years.

The information must also be filed with the **Mercantile Registry** together with the annual accounts.

Disclosure requirements

The information must be disclosed, free of charge, in at least one of the official languages of the EU.

The information must be disclosed using the common template and electronic reporting formats established by the European Commission in the Implementing Regulation, which shall be applicable to reports for financial years starting on or after 1 January 2025.

Omission of data

Certain data may be omitted, albeit temporarily and under certain conditions.

The regulations allow for the omission of information where disclosure would prove seriously detrimental to the commercial position of the entities included in the report. Nonetheless, any omissions must be:

- duly explained in the report;
- clearly identified; and
- disclosed in a subsequent report, no more than five years after the initial omission.

On no account may information relating to non-cooperative jurisdictions for tax purposes be omitted.

This possibility of omitting information calls for multinational groups to reflect beforehand on whether the form and/or content of the information to be published may prove detrimental to them in respect of their relationships with investors, creditors or the competition.

In addition, the wording "*prove seriously detrimental to the commercial position of the undertakings included in the report*" could give rise to ambiguity as to which arguments may be deemed valid for the purpose of evidencing the detriment caused to the group, while also raising the question of possible controls (in the form of official requests or alternative means of control) to determine the existence or otherwise of actual and/or potential damage.

Responsibility for ensuring compliance with this obligation

Responsibility for ensuring compliance with this obligation shall lie with:

- The members of the managing bodies of (i) the ultimate parent companies; or (ii) the single company,
- Or: (i) the members of the managing bodies of the subsidiaries; or (ii) the designated persons at branches.

These persons shall have **collective responsibility**, as appropriate, for the drawing-up, disclosure, filing and accessibility of the report, in accordance with the applicable regulations.

Entry into force of the obligation

This obligation will be applicable to financial years commencing on or after 22 June 2024. For companies with a financial year coinciding with the calendar year, the first report shall be for financial year 2025.

Filing deadline for the first report in Spain

In Spain, the first report must be published and filed together with the Statutory Annual Accounts of the parent company or subsidiary or branch covered by the obligation within six months of the end of the financial year.

For companies with a financial year coinciding with the calendar year (1 January - 31 December), the first report must be published in June 2026, in respect of financial year 2025.

This period, which is shorter than the 12 months provided for in the Directive, is a specific feature of Spanish legislation that must be taken into consideration.

The first practical consequence of this reduced six-month period (with respect to which no extensions are as yet envisaged) is that the deadline for gathering most of the information to be included in the country-by-country report (form 231) in Spain is reduced by six months, since the information to be included in such report is similar to that which must be included in the public CbC report.

This situation also raises uncertainty as to how to proceed in the event that certain information is unavailable or provisional at the date of publication. In theory, one option could be to consider the obligation fulfilled by reporting the information available at the time, with the possibility of establishing mechanisms to amend such information ex post. Such situation should nevertheless be clarified by the Spanish authorities.

How the public country-by-country report compares to the existing country-by-country report

Country-by-country reporting has been mandatory in Spain since 2016, under articles 13.1 and 14 of the CIT Regulations. This obligation applies to:

- Multinational groups with a Spanish-resident parent, provided the group's annual revenues exceed Euros 750 million.
- Spanish-resident subsidiaries of groups with foreign parents, in the cases provided for in article 13.1 of the CIT Regulations.

The necessary information must be filed using form 231, regulated by Ministry of Finance and Civil Service Order HFP/1978/2016, and is used by the State Tax Agency to prepare annual country-by-country statistics.

Key differences between the existing report and the new public CbC report

While very similar in terms of content, **the principal difference between the two obligations** - the CbC report under the CIT Regulations (form 231) and the CbC report under the Audit Law - **lies in the level of disclosure of the information supplied, since:**

- Although the Spanish Tax Authorities publish annual statistics based on the country-by-country report, the information supplied in form 231 is not made public.
- By contrast, the data contained in the public country-by-country report under Law 28/2022 are publicly accessible.

For ease of understanding, we include in the following **appendix** a table illustrating the differences in the information to be included in each report.

APPENDIX

Contents of the country-by-country report (Form 231)	Content of the public report on corporate income tax information
Gross revenues of the group, including: - revenues from related entities - revenues from third parties	Revenues (calculated in accordance with the relevant provisions). These include revenues from related-party transactions.
Profit/loss before Corporate Income Tax or taxes of an identical or similar nature.	Profit/loss before Corporate Income Tax.
Corporate Income Tax or taxes of an identical or similar nature <u>paid</u> , including any withholdings.	Corporate Income Tax or taxes of an identical or similar nature <u>paid in cash</u> (including withholdings paid by other entities with respect to the payments made to companies and branches within a group).
Corporate Income Tax or taxes of an identical or similar nature <u>accrued</u> , including any withholdings.	Corporate Income Tax or taxes of an identical or similar nature <u>accrued</u> in the year for activities pursued during the year (not taking into account deferred taxes or provisions for uncertain tax liabilities).
Share capital.	
Other retained earnings.	The amount of accumulated reserves at the end of the relevant financial year.
Average headcount.	Number of full-time employees.
Tangible assets and real estate investments other than cash and receivables.	
A list of resident entities, including permanent establishments.	A list of all the subsidiaries included in the ultimate parent company's consolidated financial statements for the relevant financial year and established in the European Union (EU) or in non-cooperative jurisdictions for tax purposes.
Main activities pursued by each of them.	All of the activities of the ultimate parent company or the single company, including the activities of all subsidiaries included in the consolidated financial statements for the relevant year.
Any other information deemed relevant and an explanation, where appropriate, of the figures included in the information.	
	The name of the ultimate parent company or of the single company, the relevant financial year, the currency used in the report and, where applicable, a list of all the subsidiaries included in the ultimate parent company's consolidated financial statements for the relevant financial year and established in the European Union or in non-cooperative jurisdictions for tax purposes.

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