



Council of the
European Union

Brussels, 15 November 2019
(OR. en)

14038/19

LIMITE

DRS 60
COMPET 732
ECOFIN 989
FISC 434
CODEC 1620

Interinstitutional File:
2016/0107(COD)

NOTE

From:	General Secretariat of the Council
On:	13 November 2019
To:	Permanent Representatives Committee/Council

No. prev. doc.:	5134/19
No. Cion doc.:	COM(2016) 198 final

Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches. - (poss) General Approach
----------	---

I. INTRODUCTION

1. On 12 April 2016, the European Commission submitted the above-mentioned proposal to the Council and the European Parliament. In the context of a broader strategy for a Fair and Efficient Corporate Tax System in the EU, the public scrutiny of tax payments in view of reinforcing public trust and strengthen companies' corporate social responsibility. This proposal requires that Multinational Enterprises (MNEs) disclose publicly in a specific report the income tax they pay together with other relevant information. MNEs, whether headquartered in the EU or outside, with turnover of more than EUR 750m will need to comply with these additional transparency requirements. For the first time, not only European businesses but also non-European multinational companies doing business in Europe will through their branches have the same reporting obligations.

The proposal complements undertakings' current financial reporting obligations under Accounting Directive No 2013/34/EU and does not interfere with these requirements in relation to their financial statements, for example as regards publishing of their annual accounts.

This proposal does not modify the rules already in place on non-financial reporting and sectoral CBCR for both the banking sector and the extractive and logging industries. However it introduces an exemption clause to avoid double reporting for the banking sector, which is already subject to stringent public reporting rules in the EU banking legislation. It is in line with OECD BEPS reporting and Council Directive (EU) 2016/881 of 25 May 2016 (OJ L146 of 3.6.16, p.8).

II. STATE OF PLAY

2. The Working Party on Company Law examined the proposal at eighteen occasions during the Netherlands, Slovak, Maltese, Estonian, Romanian and Finnish Presidencies. The latest meeting of the Working Party on Company Law (Attachés) examined doc 5134/19 on 12 November 2019.
3. The Presidency is presenting a compromise proposal in the Annex to this note in order to reach an agreement on a general approach to be endorsed at Competitiveness Council on 28 November 2019. Delegations are informed that changes compared to the previous document (doc. 5134/19) are indicated in **bold/underlined** and deletions are marked with ~~strikethrough~~.
4. The European Parliament adopted its first reading position in Plenary (doc. P8_TA-PROV(2019)0309) on 27 March 2019. The report tables 58 amendments.

III. OUTSTANDING ISSUES

Significant progress has been made since the detailed examination of the proposal began, two outstanding issues remain at this stage.

5. Article 48c, paragraph 3a: comply or explain clause

The Presidency compromise proposal aims to reach a common ground taking into account the different concerns expressed by Member States. On the one hand, the compromise proposal would guide the undertakings to conduct in a diligent manner in non-disclosure cases thus reinforcing the disclosure accountability. On the other hand, the compromise proposal would prolong the timeframe for non-disclosure to six years aiming at creating a balance with reinforced accountability. In order to compromise, the following text is proposed:

- Addition of the following sentence in Recital 9a:

"It is recognised that publicly disclosing data to be included in report on income tax information could in certain cases be seriously prejudicial to commercial position of an undertaking, since it would make it possible for competitors not subjected to similar transparency to draw significant conclusions about its current activities. Therefore, undertakings should have a possibility to defer disclosing certain information for a limited number of years, provided they clearly disclose the deferral and give a reasoned explanation for it in the report **and document the basis for the reasoning.**"

- In New 3a para in Article 48c:

Information otherwise required to be disclosed by paragraphs 2 and 3 of this Article may be omitted when its disclosure would be seriously prejudicial to the commercial position of the undertakings to which it relates. Any such omission shall be disclosed in the report together with reasoned explanation regarding its causes. Any information thus omitted shall be made public in a later report on income tax information within no more than **six** years from the date of its original omission. Information pertaining to tax jurisdictions listed in the EU list of non-cooperative jurisdictions for tax purposes may never be omitted.

6. Legal basis

One of the main items for discussion during the negotiations was the legal basis of the proposal. The views have been dissenting as to the file being a financial reporting file or a fiscal file. The Council Legal Service has issued an opinion stating that the legal basis for the Directive should be Article 115 TFEU (doc. 14384/16). The Commission maintains its position that the legal basis should be Article 50(1) TFEU as provided in its proposal. If the legal basis of the file were to be amended, it requires this a unanimous vote in the Council (Article 293(1) TFEU).

IV. CONCLUSION

7. The Permanent Representatives Committee is invited to:

- reach an agreement on the basis of the Presidency compromise text as set out in the Annex to this note;
- submit the text of the general approach to the Competitiveness Council on 28 November 2019; and
- invite the Council to
 - confirm the agreement on the general approach and
 - invite the Presidency to start negotiations with the European Parliament on the basis of this general approach, with a view to reaching an agreement at first reading.

2016/0107 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

Whereas:

- (1) The Commission in its communications entitled ‘Commission Work Programme 2016 - No time for business as usual’² and ‘Commission Work Programme 2015 - A New Start’³ identified as a priority the need to respond to our societies’ call for fairness and tax transparency.

- (2) In parallel with the work undertaken by the Council to fight corporate income tax avoidance, it is necessary to enhance public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union, as this is an essential element to further foster corporate responsibility to contribute to the welfare of our societies, to promote a better informed public debate and to regain the trust of citizens of the Union in the fairness of the national tax systems. Such public scrutiny can be achieved by means of a report on income tax information, irrespective of where the ultimate parent undertaking of the multinational group is established.

² COM(2015) 610 final of 27 October 2015.

³ COM(2014) 910 final of 16 December 2014.

- (3) Following the European Council conclusions of 22 May 2013, a review clause was introduced in Directive 2013/34/EU of the European Parliament and of the Council⁴ requiring the Commission to consider the possibility of introducing an obligation on large undertakings of additional industry sectors to produce, on an annual basis, a country-by-country report taking into account the developments in the Organisation for Economic Cooperation and Development (OECD) and the results of related European initiatives.

⁴ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (6) The public should be able to scrutinise all the activities of a group when the group has certain establishments within the Union. For groups which carry out activities within the Union only through subsidiary undertakings or branches, operating subsidiaries and branches should publish and make accessible the report of the ultimate parent undertaking to the extent that the requested information is available to the subsidiary or branch. If the requested information is not available the subsidiary or branch should explain in the report the reasons of this omission. However for reasons of proportionality and effectiveness, the obligation to publish and make accessible the report should be limited to medium-sized or large subsidiaries established in the Union, or branches of a comparable size opened in a Member State. The scope of Directive 2013/34/EU should therefore be extended accordingly to branches opened, and still operating, in a Member State by an undertaking which is established outside the Union and which has a legal form which is comparable to the types of undertakings listed in Annex I of Directive 2013/34/EU.
- (6a) Multinational groups, and where relevant, certain standalone undertakings, should provide the public with a report on income tax information when they exceed a certain size over a period of the last two consecutive financial years, depending on the consolidated revenue of the group or the revenue of the standalone undertaking. Given the wide array of financial reporting frameworks with which financial statements may comply, in order to determine the scope of application, such revenue should be defined as net turnover for undertakings governed by the law of a Member State and following national financial reporting framework of a Member State. Article 43(2)(c) of Directive 86/635/EEC and Article 66(2) of Directive 91/674/EEC provide definitions as to the determination of the net turnover of a credit institution or of an insurance undertaking, respectively. For other undertakings, the revenue should be assessed in accordance with the financial reporting framework on the basis of which these financial statements are prepared. It should be noted that "revenue" has **a** different definition for purposes of content of the report.

- (6b) At the same time it is stressed that, as concluded by the G20 and the OECD, country-by-country reports will be helpful for high-level transfer pricing risk assessment purposes only. The information in the Country-by-Country Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and that information should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and comparability analysis.
- (7) In order to avoid double reporting for the banking sector, ultimate parent undertakings and standalone undertakings which are subject to Directive 2013/36/EU of the European Parliament and of the Council⁵ and which include in their report prepared in accordance with Article 89 of Directive 2013/36/EU all its activities and, where appropriate, all the activities of its affiliated undertakings included in the consolidated financial statements, including activities not subject to the provisions of Chapter 2 of Title 1 of Part Three of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁶, should be exempted from the reporting requirements set out in this Directive.

⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338)

⁶ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

- (8) The report on income tax information should provide information concerning all the activities of all the affiliated undertakings of a group consolidated by an ultimate parent undertaking or, depending on the circumstances, concerning all the activities of a standalone undertaking. The information should be limited to what is necessary to enable effective public scrutiny, in order to ensure that disclosure does not give rise to disproportionate risks or disadvantages for undertakings. For this reason, the list of required information is exhaustive. The report should be made accessible within 12 months after the balance sheet date. Any shorter periods for the publication of financial statements should not apply with regard to the report on income tax information. The provisions of Chapter 10a of this Directive do not affect the provisions regarding annual financial statements and consolidated financial statements.
- (8a) In order to avoid administrative burden, when preparing a report on income tax information in compliance with this Directive, undertakings should be entitled to prepare the information on the basis of the reporting specifications laid down in Annex III, Section III, parts B and C of Council Directive 2011/16/EU as amended. For this reason, the report should specify the reporting framework used. The report might in addition include an overall narrative providing explanations in case of material discrepancies at group level between the amounts of taxes accrued and the amounts of taxes paid, taking into account corresponding amounts concerning previous financial years.
- (9) In order to ensure a level of detail that enables citizens to better assess the contribution of multinational undertakings to welfare in each Member State, the information should be broken down by Member State. Moreover, information concerning the operations of multinational enterprises should also be shown with a high level of detail as regards certain third country tax jurisdictions which pose particular challenges. For all other third country operations, the information should be given in an aggregate number, unless the undertaking wishes to present more detailed information.

- (9a) It is recognised that publicly disclosing data to be included in report on income tax information could in certain cases be seriously prejudicial to commercial position of an undertaking, since it would make it possible for competitors not subjected to similar transparency to draw significant conclusions about its current activities. Therefore, undertakings should have a possibility to defer disclosing certain information for a limited number of years, provided they clearly disclose the deferral and give a reasoned explanation for it in the report **and document the basis for the reasoning.**

To be read in conjunction with Article 48c (3a).

- (10) In order to strengthen responsibility vis-à-vis third parties and to ensure appropriate governance, the members of the administrative, management and supervisory bodies of the ultimate parent undertaking or standalone undertakings which are established within the Union and which have the obligation to draw up, publish and make accessible the report on income tax information, should be collectively responsible for ensuring the compliance with these reporting obligations. Given that members of the administrative, management and supervisory bodies of the subsidiaries which are established within the Union and which are controlled by an ultimate parent undertaking established outside the Union or the person(s) in charge of carrying out the disclosures formalities for the branch may have limited knowledge of the content of the report on income tax information prepared by the ultimate parent undertaking or may have limited ability to obtain such information or report from their ultimate parent undertaking, their responsibility to publish and make accessible the report on income tax information should be limited. In case this information or report is not provided, the subsidiary undertakings should publish and make accessible a statement as to why the report on income tax information could not be published and made accessible.

- (11) To ensure public awareness on the scope of and on compliance with the reporting obligations Member States might require that statutory auditor(s) or audit firm(s) state whether an undertaking is required to draw up a report on income tax information.
- (12) This Directive aims to enhance transparency and public scrutiny on corporate income tax by adapting the existing legal framework concerning the obligations imposed on companies and firms in respect of the publication of reports, for the protection of the interests of members and others, within the meaning of Article 50(2)(g) TFEU. As the Court of Justice held, in particular, in Case C-97/96 *Verband deutscher Daihatsu-Händler*⁷, Article 50(2)(g) TFEU refers to the need to protect the interests of "others" generally, without distinguishing or excluding any categories falling within the ambit of that term. Moreover, the objective of attaining freedom of establishment, which is assigned in very broad terms to the institutions by Article 50(1) TFEU, cannot be circumscribed by the provisions of Article 50(2) TFEU. Given that this Directive does not concern the harmonisation of taxes but only obligations to publish reports on income tax information, Article 50(1) TFEU constitutes the appropriate legal basis.

⁷ Judgement of the Court of Justice of 4 December 1997, C-97/96 *Verband deutscher Daihatsu-Händler* ECLI:EU:C:1997:581

(12a) To ensure the full functioning of the internal market and a level playing field between the European Union and third-country multinational enterprises, the Commission should continue to explore possibilities of increasing fairness and tax transparency.

(14) Since the objective of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its effect, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (15) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁸, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (17) Directive 2013/34/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2013/34/EU

Directive 2013/34/EU is amended as follows:

- (1) in Article 1, the following paragraph 1a is inserted:

‘1a. The coordination measures prescribed by Articles 48a to 48e and 51 shall also apply to the laws, regulations and administrative provisions of the Member States relating to

⁸ OJ C 369, 17.12.2011, p. 14.

branches opened and still operated in a Member State by an undertaking which is not governed by the law of a Member State but which is of a legal form comparable with the types of undertakings listed in Annex I. Article 2 shall apply to these branches to the extent that Articles 48a to 48e and 51 are applicable to such branches’;

(2) the following Chapter 10a is inserted:

‘Chapter 10a

Report on Income tax information

Article 48a

Definitions relating to reporting on income tax information

1. For the purposes of this Chapter, the following definitions shall apply:
 - (1) ‘ultimate parent undertaking’ means an undertaking which draws up the consolidated financial statements of the largest body of undertakings;
 - (2) ‘consolidated financial statements’ means the financial statements prepared by a parent undertaking of a group in which the assets, liabilities, equity, income and expenses are presented as those of a single economic entity;
 - (3) ‘tax jurisdiction’ means a State as well as a non-State jurisdiction which has fiscal autonomy in respect of corporate income tax;
 - (4) ‘standalone undertaking’ means an undertaking which is not part of any group within the meaning of Article 2 paragraph 11.

2. For the purposes of Article 48b, the following definition shall apply:

‘revenue’ has the same meaning as:

- (1) the ‘net turnover’, for undertakings governed by the law of a Member State, and not applying international accounting standards adopted on the basis of Regulation (EC) No 1606/2002, or
- (2) the ‘revenue’ as defined by or within the meaning of the financial reporting framework on the basis of which financial statements are prepared, for other undertakings.

Article 48b

Undertakings and branches required to report on income tax information

1. Member States shall require ultimate parent undertakings governed by their national laws which on their balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in their consolidated financial statements to draw up, publish and make accessible a report on income tax information as regards the later of the last two consecutive financial years.

Member States shall require undertakings governed by their national laws that are standalone undertakings and which on their balance sheet date exceeded for each of the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in their annual financial statements to draw up, publish and make accessible a report on income tax information as regards the later of the last two consecutive financial years.

- 1a. Member States shall not apply the rules set out in paragraph 1 to standalone undertakings, ultimate parent undertakings and their affiliated undertakings where such undertakings, including their branches, have a legal presence or a fixed place of business or a permanent business activity only within the territory of one single Member State and in no other tax jurisdiction.

2. Member States shall not apply the rules set out in paragraph 1 of this Article to standalone undertakings and ultimate parent undertakings where such undertakings or their affiliated undertakings disclose a report in accordance with Article 89 of Directive 2013/36/EU and encompass, in that report, information on all their activities and all the activities of all the affiliated undertakings included in the consolidated financial statement of those ultimate parent undertakings.

3. Member States shall require the medium-sized and large subsidiary undertakings referred to in Article 3(3) and (4) that are governed by their national laws and controlled by an ultimate parent undertaking which on its balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements and which is not governed by the law of a Member State, to publish and make accessible a report on income tax information of that ultimate parent undertaking as regards the later of the last two consecutive financial years, to the extent that this information or report is available to the subsidiary undertaking. When this information or report is not available, the subsidiary undertaking shall request its ultimate parent undertaking not governed by the law of a Member State to provide it with all information required to enable it to meet its obligation.

In case this information or report is not provided, the subsidiary undertakings shall publish and make accessible a statement as to why the report on income tax information could not be published and made accessible.

- 3a. If a subsidiary undertaking that was required to publish a statement as referred to in paragraph 3 subparagraph 2 exceeds the threshold set out in paragraph 1 for each of the last two consecutive financial years, it shall also draw up, publish and make accessible its own report on income tax information as regards the latter of the last two consecutive financial years as provided for under paragraph 1 and 1a.

4. Member States shall require branches opened in their territories and still operated by an undertaking which is not governed by the law of a Member State to publish and make accessible a report on income tax information of the ultimate parent undertaking or the standalone undertaking referred to in point (a) of this paragraph as regards the later of the last two consecutive financial years, to the extent that this information or report is available to the person(s) designated to carry out the disclosure formalities referred to in Article 48e(2). When this information or report is not available, such person(s) shall request the ultimate parent undertaking not governed by the law of a Member State or the standalone undertaking referred to in point (a) of this paragraph to provide all information required to meet their obligations. In case this information or report is not provided, the branches shall publish and make accessible a statement as to why the report on income tax information could not be published and made accessible.

Member States shall not apply the first subparagraph of this paragraph to branches which net turnover did not exceed at least for each of the last two consecutive financial years the net turnover threshold defined by the law of each Member State pursuant to Article 3(2).

Member States shall apply the rules set out in this paragraph to a branch only where the following criteria are met:

- (a) the undertaking that opened and still operates the branch is either an affiliated undertaking of a group whose ultimate parent undertaking is not governed by the law of a Member State and which on its balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements or an undertaking that is not an affiliated undertaking and which on its balance sheet date exceeded for each of the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in its financial statements; and

- (b) the ultimate parent undertaking referred to in point (a) does not have a medium-sized or large subsidiary undertaking as referred to in paragraph 3.

- 6. Member States shall not apply the rules set out in paragraphs 3 and 4 of this Article where a report on income tax information drawn up consistently with Article 48c and:
 - (a) is made accessible:
 - (i) to the public on the website of the ultimate parent undertaking not governed by the law of a Member State or of the standalone undertaking not governed by the law of a Member State;
 - (ii) in at least one of the official languages of the Union;
 - (iii) within 12 months after the balance sheet date of the financial year for which the report is drawn up; and
 - (b) identifies the name and the registered office of a single subsidiary undertaking or the name and the address of a single branch governed by the law of a Member State which has published a report in accordance with Article 48d(1).

- 7. Without prejudice to paragraph 1a of this Article, Member States may require subsidiaries and branches governed by the law of that Member State and being controlled by one ultimate parent undertaking to draw up, publish and make accessible a report on income tax information where the sum of their revenues as reflected on their financial statements exceeds EUR 750 000 000 for each of the last two consecutive financial years and where no report on income tax information has been drawn up, published and made accessible as required by this Article.

Article 48c

Content of the report on income tax information

1. The report on income tax information shall include information relating to all the activities of the standalone undertaking or the ultimate parent undertaking, including those of all affiliated undertakings consolidated in the financial statement in respect of the relevant financial year.

2. The information referred to in paragraph 1 shall be as follows:
 - (-a) the name of the ultimate parent undertaking or the standalone undertaking, financial year concerned and the currency used;

 - (a) a brief description of the nature of the activities;

 - (b) the number of employees which is the average number of employees during the financial year;

 - (c) the revenues which are:
 - (i) the sum of the net turnover, other operating income, income from participating interests, excluding dividends received from affiliated undertakings, income from other investments and loans forming part of the fixed assets, other interest receivable and similar income as listed in Annexes V and VI of this Directive, or

 - (ii) the income as defined by or within the meaning of the financial reporting framework on the basis of which financial statements are prepared excluding value adjustments and dividends received from affiliated undertakings;

- (d) the amount of profit or loss before income tax;
- (e) the amount of income tax accrued during the relevant financial year which is the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches in the relevant tax jurisdiction;
- (f) the amount of income tax paid on cash basis which is the amount of income tax paid during the relevant financial year by undertakings and branches in the relevant tax jurisdiction; and
- (g) the amount of accumulated earnings at the end of the relevant financial year.

For the purposes of point (c) of the first subparagraph the revenues shall include transactions with related parties.

For the purposes of point (e) of the first subparagraph the current tax expense shall relate only to the activities of an undertaking in the current financial year and shall not include deferred taxes or provisions for uncertain tax liabilities.

For the purposes of point (f) of the first subparagraph taxes paid shall include withholding taxes paid by other undertakings with respect to payments to undertakings and branches within a group.

For the purposes of point (g) of the first subparagraph the accumulated earnings shall mean the sum of the profits of past financial years and the relevant financial year not decided for distribution. With regard to branches, accumulated earnings shall be reported by the undertaking which opened and still operates a branch.

- 2a. Member States shall permit the information listed in paragraph 2 to correspond to the reporting specifications referred to in Annex III, Section III, Parts B and C of Directive 2011/16/EU.

3. The report shall present the information referred to in paragraph 2 or 2a separately for each Member State. Where a Member State comprises several tax jurisdictions, the information shall be combined at Member State level.

The report shall also present the information referred to in paragraph 2 or 2a of this Article separately for each tax jurisdiction which, at the end of the previous financial year, is listed in the EU list of non-cooperative jurisdictions for tax purposes⁹, unless the report explicitly confirms, subject to the responsibility referred to in Article 48e below, that the affiliated undertakings of a group governed by the laws of such tax jurisdiction do not engage directly in transactions with any affiliated undertaking of the same group governed by the laws of any Member State.

⁹ The EU list of non-cooperative jurisdictions for tax purposes — Report by the Code of Conduct Group (Business taxation) suggesting amendments to the Annexes of the Council conclusions of 5 December 2017, including the de-listing of one jurisdiction, OJ C 403, 9.11.2018, p. 4–6.

The report shall present the information referred to in paragraph 2 or 2a on an aggregated basis for other tax jurisdictions.

The information shall be attributed to each relevant tax jurisdiction on the basis of a legal presence, the existence of a fixed place of business or of a permanent business activity which, arising from the activities of the group or standalone undertaking, can be subject to income tax in that tax jurisdiction.

Where the activities of several affiliated undertakings can be subject to income tax within a single tax jurisdiction, the information attributed to that tax jurisdiction shall represent the sum of the information relating to such activities of each affiliated undertaking and their branches in that tax jurisdiction.

Information on any particular activity shall not be attributed simultaneously to more than one tax jurisdiction.

3a. Information otherwise required to be disclosed by paragraphs 2 and 3 of this Article may be omitted when its disclosure would be seriously prejudicial to the commercial position of the undertakings to which it relates. Any such omission shall be disclosed in the report together with reasoned explanation regarding its causes.

Any information thus omitted shall be made public in a later report on income tax information within no more than ~~four~~ six years from the date of its original omission.

Information pertaining to tax jurisdictions listed in the EU list of non-cooperative jurisdictions for tax purposes may never be omitted.

4. The report may include, where applicable at group level, an overall narrative providing explanations on material discrepancies between the amounts disclosed pursuant to points (e) and (f) of paragraph 2, if any, taking into account if appropriate corresponding amounts concerning previous financial years.

6. The currency used in the report on income tax information shall be the currency in which the consolidated financial statements of the ultimate parent undertaking or the annual financial statements of the standalone undertaking are presented. Member States shall not require this report to be published in a different currency than the currency used in the financial statements.

However, in the case mentioned in the second subparagraph of Article 48b(3a), the subsidiary undertaking shall publish the report in the currency in which it publishes its annual financial statements.

7. Where Member States have not adopted the euro, the threshold referred to in Article 48b(1) may be converted into the national currency. Such conversion must apply the exchange rate as at *[Publications Office- set the date = the date of the entry in force of this Directive]* published in the Official Journal of the European Union and may increase or decrease the thresholds by not more than 5 % in order to produce a round sum in the national currencies.

The thresholds referred to in Article 48b(3) and (4) shall be converted to an equivalent amount in the national currency of any relevant third countries by applying the exchange rate as at *[Publications Office - set the date = the date of the entry in force of this Directive]*, rounded off to the nearest thousand.

8. The report shall specify whether it was prepared in accordance with paragraph 2 or 2a of this Article.

Article 48d

Publication and Accessibility

1. The report on income tax information or the statement mentioned in Article 48b shall be published within 12 months after the balance sheet date of the financial year for which the report is drawn up as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC and where relevant in accordance with Article 7 of Council Directive 89/666/EEC.
 - 1a. The report or the statement published in accordance with paragraph 1 shall be made accessible to the public within 12 months after the balance sheet date of the financial year for which the report is drawn up:
 - (a) on the website of the undertaking when Article 48b(1) applies, or
 - (b) on the website of the subsidiary undertaking or on the website of an affiliated undertaking when Article 48b(3a) applies, or
 - (c) on the website of the branch or on the website of the undertaking which opened the branch or on the website of an affiliated undertaking when Article 48b(4) applies.
 - 1b. Member States may exempt undertakings from applying the rules set out in paragraph 1a of this Article where the report published in accordance with paragraph 1 is simultaneously made accessible to the public on the website of the register referred to in Article 3(1) of Directive 2009/101/EC, free of charge to any third party located within the Union. The website of the undertakings and branches as referred to in paragraph 1a shall contain information on the exemption and the reference to the website of the relevant register.
2. The report referred to in Article 48b(1), (3), (4) and (6) shall remain accessible on the relevant website for a minimum of five consecutive years.

Article 48e

Responsibility for drawing up, publishing and making accessible the report on income tax information

1. Member States shall ensure that the members of the administrative, management and supervisory bodies of the ultimate parent undertaking or the standalone undertakings referred to in Article 48b(1), or the subsidiary undertaking exceeding for each of the last two consecutive financial years EUR 750 000 000 of total consolidated revenue as referred to in Article 48b(3a), acting within the competences assigned to them under national law, have collective responsibility for ensuring that the report on income tax information is drawn up, published and made accessible in accordance with Articles 48b, 48c and 48d.

2. Member States shall ensure that the members of the administrative, management and supervisory bodies of the subsidiary undertakings referred to in Article 48b(3) of this Directive and the person(s) designated to carry out the disclosure formalities provided for in Article 13 of Directive 89/666/EEC for the branch referred to in Article 48b(4) of this Directive, acting within the competences assigned to them by national law, have collective responsibility for ensuring that, to the best of their knowledge and ability, the report on income tax information drawn up consistently with Article 48c, is published and made accessible in accordance with Article 48d.

Article 48f

Statement by statutory auditor

Member States may require that, where the financial statements of an undertaking governed by the law of a Member State are required to be audited by one or more statutory auditor(s) or audit firm(s), the statutory auditor(s) or audit firm(s) state(s) in the audit report whether, the undertaking is required to draw up a report on income tax information in accordance with Article 48b.

Article 48h

Commencement date for reporting on income tax information

Member States shall ensure that laws, regulations and administrative provisions transposing Articles 48a to 48f apply, at the latest, from the commencement date of the first financial year starting on or after [*Publications Office- set the date = one year after the transposition deadline*].

Article 48i

Report

The Commission shall report on the compliance with and the impact of the reporting obligations set out in Articles 48a to 48f. The report shall include an evaluation of whether the report on income tax information delivers appropriate and proportionate results, taking into account the need to ensure a sufficient level of transparency and the need for a competitive environment for undertakings.

The report shall be submitted to the European Parliament and to the Council by [*Publications Office- set the date = five years after the transposition date of this Directive*].’

(3) Article 49 is amended as follows:

(a) Paragraphs 2 and 3 are replaced by the following

‘2. The power to adopt delegated acts referred to in Article 1(2), Article 3(13) and Article 46(2) shall be conferred on the Commission for an indeterminate period of time from the date referred to in Article 54.

3. The delegation of power referred to in Article 1(2), Article 3(13) and Article 46(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’

(b) The following paragraph 3a is inserted:

‘3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016 ¹⁰.’

(c) Paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 1(2), Article 3(13) and Article 46(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’

¹⁰ OJ L 123, p. 1.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*Publications Office - set the date = two years after entry into force*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament

The President

For the Council

The President