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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)

{SWD(2016) 117}  
{SWD(2016) 118}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

A healthy Single Market needs a fair, efficient and growth-friendly corporate tax system, based on the principle that companies should pay taxes in the country where profits are generated. Aggressive tax planning undermines this principle. The majority of companies do not engage in aggressive tax planning and suffer a competitive disadvantage to those that do. Small and medium-sized companies are particularly affected by this phenomenon.

Fighting against tax avoidance and aggressive tax planning, both at EU and global level, is a political priority for the European Commission. As part of a broader strategy for a Fair and Efficient Corporate Tax System in the EU<sup>1</sup>, public scrutiny can help to ensure that profits are effectively taxed where they are generated. Public scrutiny can reinforce public trust and strengthen companies' corporate social responsibility by contributing to the welfare through paying taxes in the country where they are active. In addition, it can also promote a better informed debate on potential shortcomings in tax laws.

The Commission announced in March 2015 a comprehensive list of initiatives in its Action Plan on a Fairer Corporate Tax System (COM(2015)302) and proposed as part of the subsequent Anti-Tax Avoidance Package<sup>2</sup> (ATAP), to implement in the Union Action 13 of the OECD Action Plan endorsed by the G20 to fight base erosion and profit shifting (hereafter, BEPS). As a result, tax authorities will receive a country-by-country report from multinational enterprises (MNEs) on income tax paid which should enable better compliance with tax laws.

Responding to the calls from the G20 and elsewhere, greater transparency on the side of companies is needed to enable public scrutiny of whether tax is paid where profits are produced. This proposal requires that MNEs disclose publicly in a specific report the income tax they pay together with other relevant tax-related 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 have the same reporting obligations.

Third country jurisdictions which do not respect international tax good governance standards create particular opportunities for tax avoidance and tax evasion. If MNEs are active in such jurisdictions, special transparency requirements should apply.

This proposal focusses on corporate groups with a worldwide consolidated net turnover of more than EUR 750 million, in line with the scope of global OECD initiatives on tax transparency. The proposal does not impose any obligations on small and medium-sized companies<sup>3</sup>. It is proportionate both in terms of scope and information to be disclosed so as to limit compliance and other costs for affected companies, as well as to avoid jeopardising their

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<sup>1</sup> See European Commission, [Action Plan on Corporate Taxation](#), June 2015. See also European Commission, [Anti Tax Avoidance Package](#), January 2016

<sup>2</sup> Commission Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

<sup>3</sup> With the exception of medium-sized subsidiaries and branches of non-EU MNE groups with a consolidated turnover exceeding EUR 750 million which will be subject to reporting requirements.

competitiveness or expose them unduly to double taxation risks. It fits into the multilateral approach supported by the G20 and the OECD. The Commission will continue to work proactively on these issues with all relevant international partners.

- **Consistency with existing policy provisions in the policy area**

This proposal complements undertakings' current financial reporting requirements and does not interfere with these requirements in relation to their financial statements, for example.

This proposal does not modify the rules already in place on non-financial reporting and sectoral CBCR for both the banking sector<sup>4</sup> and the extractive and logging industries<sup>5</sup>. 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.

- **Consistency with other Union policies**

In the wake of the endorsement by the G20 of the Action Plan designed by the OECD to fight base erosion and profit shifting, the ATAP that was tabled in January 2016 requires very large MNEs<sup>6</sup> to report CBCR information to tax authorities. The information reported to tax authorities will not be disclosed to the public. The CBCR requirement in the ATAP is a tool that will assist tax authorities in orienting their tax audits and in ensuring compliance.

This proposal complements the ATAP proposal but has a different purpose. It will require the same MNEs to disclose publicly certain items of the information submitted to tax authorities.

This proposal contributes to EU policies on Corporate Social Responsibility, growth and jobs. This proposal responds to calls by the European Parliament to introduce a CBCR on corporate income tax.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Article 50, paragraph 1 TFEU has been determined to be an appropriate legal base for this initiative, since it amends an existing Directive, which is based on that Article.

- **Subsidiarity (for non-exclusive competence)**

In an increasingly global integrated and digitalised economy, corporations and production value chains reflect less national and indeed regional boundaries. By contrast, tax policies and administration remain primarily a national responsibility. Due to the cross-border nature of numerous tax planning structures and transfer pricing arrangements, MNEs can easily relocate their tax base from one jurisdiction to another within or outside the Union. The EU action is thus justified on the grounds of subsidiarity in order to address the cross-border dimension where there is aggressive tax planning or transfer pricing arrangements.

- **Proportionality**

This initiative builds largely on the international consensus developed by the G20 in terms of scope and content. It ensures the right balance between benefits derived through public

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<sup>4</sup> Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (Article 89)

<sup>5</sup> Directive 2013/34/EU (Chapter 10)

<sup>6</sup> Commission Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

transparency and the need for a strong and robust EU economy. This initiative responds to the concerns expressed by interested parties about the distortions in the single market without compromising EU competitiveness. It should not cause undue administrative burden on companies, generate further tax conflicts or pose the risk of double taxation. It is limited to what is necessary to achieve the objective of greater transparency.

- **Choice of the instrument**

Having regard to the legal base and the strong connection of the initiative with corporate reporting, including non-financial reporting, an amendment of the Accounting Directive is proposed.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

This proposal introduces Country by Country Reporting which is new for most industry sectors. Similar reporting requirements have been introduced for the banking, logging and extractive industries. The evidence of the CBCR published by banks since it came into force in 2015 is that CBCR is a useful tool for enabling the assessment of whether taxes are being paid where profits are being generated.

- **Consultations**

The Commission services held a wide consultation between June and December 2015, generating views from over four hundred respondents representing business, industry associations, NGOs, citizens and think tanks. The factual summary of this consultation is available on the web site of the European Commission<sup>7</sup>. In addition, ad hoc exchanges, meetings and a high level roundtable<sup>8</sup> allowed the Commission to obtain a further understanding of the challenges at stake, including both the benefits and the risks of greater public transparency in the area of corporate income tax. All inputs received during the consultation have been carefully considered and taken into account.

Most individuals who responded to the public consultation called for the EU to lead the debate, and if necessary to go beyond the current initiatives at international level on country by country reporting. NGOs and trade unions tended to agree with this position. On the other hand, most businesses preferred to go no further than implementation, at EU level, of the G20/OECD BEPS Action Plan requiring disclosure of a country-by-country report just to tax authorities.

- **Collection and use of expertise**

The Commission services held a meeting on tax transparency with the Platform for Tax Good Governance on 24 September 2015<sup>9</sup>. Amongst other research, the Commission services commissioned a study from PwC<sup>10</sup> in 2014 on the potential economic consequences of country-by-country reporting for banks. A synopsis report on all the consultation activities

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<sup>7</sup> European Commission, [Factual Summary of the responses to the public consultation on assessing the potential for further transparency on corporate income taxes](#), January 2016

<sup>8</sup> Roundtable where Commissioners Dombrovskis, Hill and Moscovici met with an array of stakeholders (1 October 2015)

<sup>9</sup> European Commission, [Platform for Tax Good Governance](#)

<sup>10</sup> Study "[General assessment of potential economic consequences of country-by-country reporting under CRD IV](#)", PWC, 2014

carried out by the European Commission to support this initiative is available on the web site of the European Commission.

- **Impact assessment**

The proposal is supported by an impact assessment which was positively received by the Regulatory Scrutiny Board. Following the opinion of the Board, the impact assessment was improved in several ways. First, it better distinguishes measures designed to directly tackle the corporate tax avoidance problem from the indirect benefits that are expected through increased transparency. Second, it elaborates further on a voluntary disclosure option (labelling system). Third, the assessment of the estimated impacts is more clearly separated from the impact of other tax avoidance measures included in the baseline scenario.

The proposal made today is based on the preferred option identified in the impact assessment, which is a public CBCR on worldwide operations broken down by EU Member State and aggregated for non-EU operations. The proposal applies to all EU and non-EU MNEs with a consolidated turnover of at least EUR 750 million, having activities in the EU by way of at least an establishment. The type of information to be disclosed includes income tax paid and accrued as well as the necessary contextual information. The proposal diverges from the impact assessment in two areas: it has been refined with respect to reporting for non-EU operations, where the same level of detailed assessment applying to EU Member States will also be required for certain tax jurisdictions. Moreover, it is proposed to require the disclosure of accumulated earnings on a country-by-country basis and to seek explanations at the corporate group level where there are material discrepancies between the taxes accrued and the taxes effectively paid.

In terms of societal benefits, this initiative responds to the increased demand for transparency regarding the tax affairs of MNE groups. By providing more information in a more convenient form, it should also contribute to increasing public trust in the fairness of the tax systems.

In terms of economic impact, the proposal does not imply significant additional administrative burdens as very large MNEs will in any case have to submit a more comprehensive CBCR to tax authorities when the ATAP is implemented. All very large MNEs with activities in the EU will have the same disclosure requirement, whether they are headquartered in the EU or in a third-country. Moreover, this public CBCR presents in a single document information that is already largely accessible in the business registers of each Member State. The competitiveness of undertakings will therefore not be affected. The risk of generating further tax conflicts and double taxation will be limited as publicly available tax information will be broken down only for a limited number of tax jurisdictions. The information is in general aggregated as regards operations in other jurisdictions.

- **Regulatory fitness and simplification**

No new obligations are imposed on micro or small undertakings in the EU. The measure targets only multinational companies that are the best equipped to engage in tax planning activities; that is companies whose consolidated turnover exceeds EUR 750 million. It is estimated that at least 6 000 multinational companies will need to draw up a country-by-country report due to being active in the EU markets. Of those, around 2 000 companies are headquartered in the EU, i.e., only a fraction of the total 7.5 million European companies. In order to cover multinational companies that are established in non-EU countries, the medium-

sized and larger subsidiaries in the EU – alternatively, branches of a comparable size – will be subject to obligations.

Digitalised reports facilitate access and processing by any interested party (whether an interested investor, or members of civil society). For this reason, a publication on the undertakings' web site is required. No particular format or language is imposed.

- **Fundamental rights**

Overall, the extent of information envisaged is proportionate to the objectives of enhancing public transparency and scrutiny. Reporting builds on information generally published in financial statements of most of MNE groups in the EU.

#### **4. BUDGETARY IMPLICATIONS**

There are no budgetary implications of the initiative.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the implementation of the policy in cooperation with Member States. Five years after the transposition date, the Commission will produce an evaluation of this Directive.

The evaluation will examine the effectiveness, efficiency, relevance, coherence and added value in terms of public information of the proposal, including any significant impacts on undertakings or in third countries. The evaluation will also take into account new international developments.

- **Explanatory documents**

CBCR is a relatively new concept that requires technically sound implementation. In order to fulfil the objective of this proposal and avoid potential loopholes and mismatches in terms of Member State implementation into national law, explanatory documents will be necessary to assist with transposition and to allow effective verification.

This justifies the need for Member States to accompany the notification of their transposition measures with explanatory documents in the form of e.g. a correlation table.

- **Detailed explanation of the specific provisions of the proposal**

*Scope – very large MNE groups*

To ensure an appropriate balance of reporting burden, only MNE Groups with a total consolidated group revenue exceeding EUR 750 million will be required to prepare the CBCR. This is the same threshold as that set out in the OECD/BEPS and in the ATAP. In light of the specific objectives of public tax transparency, and going further in some respects than the rules currently applicable in the sectors of banks and extractive industries, the threshold of EUR 750 million will be calculated on a worldwide basis, and MNE groups are required to submit information on their worldwide activities. According to the OECD, based on this threshold, only 10-15% of MNEs will be required to submit a CBCR; but the turnover of those MNEs will represent approximately 90% of the turnover of all MNEs. Small and medium-sized companies are not affected by the proposal<sup>11</sup>.

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<sup>11</sup> Ibid 3

For any MNE headquartered in a third country, the obligation will fall on its subsidiaries or branches in the EU unless the non-EU MNE makes the CBCR group report publicly accessible and indicates which subsidiary or branch in the EU is responsible for the publication of the CBCR on behalf of the "parent" company.

This is in line with the Directive on Administrative Cooperation<sup>12</sup> which provides that subsidiaries or branches in the EU must provide the CBCR of its third country parent's group to tax authorities. The objective is to provide the tax administration with a complete set of information required to consider potential harmful tax practices rather than to provide the wider public with a general set of country-by-country data to improve transparency.

Given the threshold proposed for multinational companies to fall within the scope of this initiative and given the current reporting obligations in the EU, it is proportionate and efficient to impose the reporting obligation only on medium-sized or larger subsidiaries established in the EU. There are thus no new obligations placed on small companies, who represent more than 95 % of all companies in the EU.

#### *Banking groups*

Banking groups established in the EU are already required to publish a CBCR under Article 89 of Directive 2013/36/EU of the European Parliament and of the Council. Where these are MNEs which fall within the scope of this initiative, they will be exempted from the obligation to report on income tax information, provided that the report disclosed under Article 89 of Directive 2013/36/EU encompasses the activities of the ultimate parent undertaking in the EU and of all of its affiliated undertakings<sup>13</sup>.

#### *Content*

Only information that is necessary and sufficient to meet the stated objectives of this initiative will be disclosed, namely: the nature of the activities, the number of persons employed, the net turnover made (including with related parties), the profit made before tax, the amount of income tax due in the country as a result of the profit made in the current year, the actual payments made to the country's treasury during that year, and the amount of accumulated earnings.

In order to ensure a level of detail that will enable citizens to better assess how MNEs contribute to welfare in each Member State, the information should be broken down by Member State. In addition, because some third countries refuse to respect good governance standards in taxation and pose specific tax challenges, the information on operations of MNEs should also be shown with a high level of detail. The EU has undertaken to draw up a common list of certain tax jurisdictions on this basis in line with the Commission Communication<sup>14</sup> of 28 January 2016, which specified the proposed approach and the criteria to draw up such a list.

As set out in that Communication, the common EU list will be based on clear and internationally justifiable criteria, based on internationally-agreed standards as set out in the Directive and a robust screening process. The list will be developed by the Commission and Member States. The Commission proposes that a final decision on the tax jurisdictions to be

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<sup>12</sup> Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

<sup>13</sup> 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).

<sup>14</sup> Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation, COM (2016) 24 final.

included in the common EU list would be made in a Delegated Act allowing a role for both Council and Parliament.

Apart from the exception noted above in relation to some third country jurisdictions which pose particular challenges, the same information on the activities of the group in other tax jurisdictions will be provided on an aggregated basis. Where more than one entity of a group is involved in a given country, the CBCR will present the sum of the information relating to each entity in that country.

#### *Publication*

The consolidated report on income tax information will be published in a business register with the objective of ensuring certainty and availability over time. Moreover, as the objective of this initiative is to enable public scrutiny, those reports will also be made accessible to the public on company websites. To allow for comparisons over time, reports will remain accessible for at least five consecutive years on the websites.

#### *Enforcement*

Enforcement of this initiative will be ensured with a combination of provisions. Member States should introduce collective responsibility of the administrative, management and supervisory bodies for these reports. The statutory auditor of any local subsidiary in charge will have to verify whether the CBCR has been provided and made accessible on the Internet. In the case of a branch of a third country MNE, that responsibility will be borne by those persons in charge of disclosure formalities. Finally, Article 51 of Directive 2013/34/EU will apply, ensuring that infringements will be sanctioned by effective, proportionate and dissuasive penalties for MNEs or their subsidiaries or branches.

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 Committee<sup>15</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In recent years, the challenge posed by corporate income tax avoidance has increased considerably and has become a major focus of concern within the Union and globally. The European Council in its conclusions of 18 December 2014 acknowledged the urgent need to advance efforts in the fight against tax avoidance both at global and Union level. The Commission in its communications entitled ‘Commission Work Programme 2016 - No time for business as usual’<sup>16</sup> and ‘Commission Work Programme 2015 - A New Start’<sup>17</sup> identified as a priority the need to move to a system whereby the country in which profits are generated is also the country of taxation. The Commission also identified as a priority the need to respond to our societies’ call for fairness and tax transparency.
- (2) The European Parliament in its resolution of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies in the Union<sup>18</sup> acknowledged that increased transparency in the area of corporate taxation can improve tax collection, make the work of tax authorities more efficient and ensure increased public trust and confidence in tax systems and governments.
- (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 Council<sup>19</sup> requiring the Commission to consider the possibility of introducing an obligation on

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<sup>15</sup> OJ C [...], [...], p. [...].

<sup>16</sup> COM(2015) 610 final of 27 October 2015.

<sup>17</sup> COM(2014) 910 final of 16 December 2014.

<sup>18</sup> 2015/2010(INL)

<sup>19</sup> 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).

large undertakings of additional industry sectors to produce, on an annual basis, a country-by-country reporting taking into account the developments in the Organisation for Economic Cooperation and Development (OECD) and the results of related European initiatives.

- (4) Calling for a globally fair and modern international tax system in November 2015, the G20 endorsed the OECD ‘Action Plan on Base Erosion and Profit Shifting’ (BEPS) which aimed at providing governments with clear international solutions to address the gaps and mismatches in existing rules which allow corporate profits to shift to locations of no or low taxation, where no real value creation may take place. In particular, BEPS Action 13 introduces a country-by-country reporting by certain multinational undertakings to national tax authorities on a confidential basis. On 27 January 2016, the Commission adopted the ‘Anti-Tax Avoidance Package’. One of the objectives of that package is to transpose into Union law, the BEPS Action 13 by amending Council Directive 2011/16/EU<sup>20</sup>.
- (5) Enhanced public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union is an essential element to further foster corporate responsibility, to contribute to the welfare through taxes, to promote fairer tax competition within the Union through a better informed public debate and to restore public trust 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.
- (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, subsidiaries and branches should publish and make accessible the report of the ultimate parent undertaking. 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 in a Member State by an undertaking which is established outside the Union.
- (7) In order to avoid double reporting for the banking sector, ultimate parent undertakings which are subject to Directive 2013/36/EU of the European Parliament and of the Council<sup>21</sup> and which include in their report prepared in accordance with Article 89 of Directive 2013/36/EU all its activities and 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 Council<sup>22</sup>, should be exempted from the reporting requirements set out in this Directive.

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<sup>20</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

<sup>21</sup> 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).

<sup>22</sup> 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 an undertaking or of all the affiliated undertakings of a group controlled by an ultimate parent undertaking. The information should be based on the reporting specifications of BEPS' Action 13 and 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. The report should also include a brief description of the nature of the activities. Such description might be based on the categorisation provided for in table 2 of the Annex III of Chapter V of the OECD "Transfer Pricing Guidelines on Documentation". The report should 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 tax jurisdictions which pose particular challenges. For all other third country operations, the information should be given in an aggregate number.
- (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 which is established within the Union and which has 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, their responsibility to publish and make accessible the report on income tax information should be limited.
- (11) To ensure that cases of non-compliance are disclosed to the public, statutory auditor(s) or audit firm(s) should check whether the report on income tax information has been submitted and presented in accordance with the requirements of this Directive and made accessible on the relevant undertaking's website or on the website of an affiliated undertaking.
- (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*<sup>23</sup>, 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

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<sup>23</sup> Judgement of the Court of Justice of 4 December 1997, C-97/96 *Verband deutscher Daihatsu-Händler* ECLI:EU:C:1997:581

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.

- (13) In order to determine certain tax jurisdictions for which a high level of detail should be shown, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of drawing up a common Union list of these tax jurisdictions. This list should be drawn up on the basis of certain criteria, identified on the basis of Annex 1 of the Communication from the Commission to the European Parliament and Council on an External Strategy for Effective Taxation (COM(2016) 24 final). It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making as approved by the European Parliament, the Council and the Commission and pending formal signature. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (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 documents<sup>24</sup>, 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 2, 48a to 48g and 51 shall also apply to the laws, regulations and administrative provisions of the Member States relating to branches opened 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.’;

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<sup>24</sup> OJ C 369, 17.12.2011, p. 14.

- (2) the following Chapter 10a is inserted:

## **‘Chapter 10a**

### **Report on Income tax information**

#### *Article 48a*

##### Definitions relating to reporting on income tax information

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.

#### *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 and having a consolidated net turnover exceeding EUR 750 000 000 as well as undertakings governed by their national laws that are not affiliated undertakings and having a net turnover exceeding EUR 750 000 000 to draw up and publish a report on income tax information on an annual basis.

The report on income tax information shall be made accessible to the public on the website of the undertaking on the date of its publication.

2. Member States shall not apply the rules set out in paragraph 1 of this Article to ultimate parent undertakings where such undertakings or their affiliated undertakings are subject to Article 89 of Directive 2013/36/EU of the European Parliament and of the Council\* and encompass, in a country-by-country report, information on 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) which are governed by their national laws and controlled by an ultimate parent undertaking which has a consolidated net turnover exceeding EUR 750 000 000 and which is not governed by the law of a Member State, to publish the report on income tax information of that ultimate parent undertaking on an annual basis.

The report on income tax information shall be made accessible to the public on the date of its publication on the website of the subsidiary undertaking or on the website of an affiliated undertaking.

4. Member States shall require branches which are opened in their territories by an undertaking which is not governed by the law of a Member State to publish on an

annual basis the report on income tax information of the ultimate parent undertaking referred to in point (a) of paragraph 5 of this Article.

The report on income tax information shall be made accessible to the public on the date of its publication on the website of the branch or on the website of an affiliated undertaking.

Member States shall apply the first subparagraph of this paragraph only to branches which have net turnover exceeding net turnover threshold defined by the law of each Member State pursuant to Article 3(2).

5. Member States shall apply the rules set out in paragraph 4 only to a branch where the following criteria are met:
  - (a) the undertaking which opened the branch is either an affiliated undertaking of a group which is controlled by an ultimate parent undertaking not governed by the law of a Member State and which has a consolidated net turnover exceeding EUR 750 000 000 or an undertaking that is not an affiliated and which has a net turnover exceeding EUR 750 000 000;
  - (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 in accordance with Article 48c is made accessible to the public on the website of the ultimate parent undertaking not governed by the law of a Member State within a reasonable period of time, which shall not exceed 12 months after the balance sheet date and where the report identifies the name and registered office of the single subsidiary undertaking or the single branch governed by the law of a Member State which has published the report in accordance with Article 48d(1).
7. Member State shall require subsidiaries or branches not subject to the provisions of paragraphs 3 and 4 to publish and make accessible the report on income tax information where such subsidiaries or branches have been established for the purpose of avoiding the reporting requirements set out in this Chapter.

#### *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 undertaking and the ultimate parent undertaking, including activities 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 comprise the following:
  - (a) a brief description of the nature of the activities;
  - (b) the number of employees;
  - (c) the amount of the net turnover, which includes the turnover made with related parties;
  - (d) the amount of profit or loss before income tax;
  - (e) the amount of income tax accrued (current year) which is the current tax expense recognised on taxable profits or losses of the financial year by

undertakings and branches resident for tax purposes in the relevant tax jurisdiction;

(f) the amount of income tax paid which is the amount of income tax paid during the relevant financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction; and

(g) the amount of accumulated earnings.

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.

3. The report shall present the information referred to in paragraph 2 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 of this Article separately for each tax jurisdiction which, at the end of the previous financial year, is listed in the common Union list of certain tax jurisdictions drawn up pursuant to Article 48g, 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.

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

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

Where the activities of several affiliated undertakings can give rise to a tax liability 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.

4. The report shall include 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.
5. The report on income tax information shall be published and made accessible on the website in at least one of the official languages of the Union.
6. The currency used in the report on income tax information shall be the currency in which the consolidated financial statements are presented. Member States shall not require this report to be published in a different currency than the currency used in the financial statements.
7. Where Member States have not adopted the euro, the threshold referred to in Article 48b(1) shall be converted into the national currency by applying 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 by increasing or

decreasing it 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.

#### *Article 48d*

##### Publication and Accessibility

1. The report on income tax information shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC, together with documents referred to in Article 30(1) of this Directive and where relevant, with the accounting documents referred to in Article 9 of Council Directive 89/666/EEC\*\*.
2. The report referred to in Article 48b(1), (3), (4) and (6) shall remain accessible on the 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 referred to in Article 48b(1), 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 is drawn up, published and made accessible in accordance with Articles 48b, 48c and 48d.

#### *Article 48f*

##### Independent check

Member States shall ensure that, where the financial statements of an affiliated undertaking are audited by one or more statutory auditor(s) or audit firm(s) pursuant to Article 34(1), the statutory auditor(s) or audit firm(s) also check whether the report on income tax information has been provided and made accessible in accordance with Articles 48b, 48c and 48d. The statutory auditor(s) or audit firm(s) shall indicate in the audit report if the report on income tax information has not been provided or made accessible in accordance with those Articles.

#### *Article 48g*

##### Common Union list of certain tax jurisdictions

The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in relation to drawing up a common Union list of certain tax jurisdictions. That list shall be based on the assessment of the tax jurisdictions, which do not comply with the following criteria:

- (1) Transparency and exchange of information, including information exchange on request and Automatic Exchange of Information of financial account information;
- (2) Fair tax competition;
- (3) Standards set up by the G20 and/or the OECD;
- (4) Other relevant standards, including international standards set up by the Financial Action Task Force.

The Commission shall regularly review the list and, where appropriate, amend it to take account of new circumstances.

#### *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), Article 46(2) and Article 48g 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), Article 46(2) and Article 48g 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 [date].’

(c) Paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 1(2), Article 3(13) Article 46(2) or Article 48g 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.’

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\* 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).

\*\* Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (OJ L 395, 30.12.1989, p. 36).’

## 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 = one year 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*