
ON THE INTRODUCTION OF NEW PUBLIC DISCLOSURE REGULATIONS ON CORPORATE TAX IN THE FINANCIAL STATEMENTS OF CERTAIN TYPES OF UNDERTAKINGS IN THE EUROPEAN UNION

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Abstract: This article examines one of the main priorities of the European Commission (EC) regarding the introduction of the regulatory obligation for certain types of undertakings to disclose information about the corporation tax accrued and paid by them.

The object of the survey is the reform that has taken place over the last few years of the European Union (EU) on improving tax transparency and public control over multinational companies.

The subject of the study is aimed at an objective analysis of the overall development process and the forthcoming adoption of a Directive amending the basic Accounting *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 of the Council* as regards the disclosure of corporate tax information by certain types of undertakings.

The purpose of the study is to investigate the regulatory decisions and proposed measures for mandatory public disclosure in financial statements of large multinational corporations on information on accrued and paid corporate tax for each country in which they conduct business. Methodological examples have been developed to illustrate the results of the implementation of the new regulations. Critical analysis of disclosure requirements for corporate tax information has also been made.

Chronologically, the activities and achievements of European regulators as a result of the Commission's program to reduce costs and administrative burdens for businesses in the internal market, accompanied by increased tax transparency by limiting business tax deviations, have been examined. The author argues in favor of the EU decision to further harmonize corporate income taxation by introducing a common consolidated tax base.

The development focuses mainly on the accounting aspect of the obligation to publicly disclose corporate tax information in the financial statements of certain types of undertakings in the EU. This is just one of the measures the EC has included in its action plan to combat tax fraud and tax evasion. The EC strategy in this regard is multifaceted as it affects not only the financial reporting of undertakings but, above all, the taxation of corporate tax, administrative cooperation, automatic exchange of information between the tax authorities of the EU Member States and the disclosure of banking secrecy for tax purposes. The proposed changes in accounting regulations have not yet been formally adopted and do not have the status of a legislative act. The Commission's Impact Assessment on Improved Corporate Tax Transparency, the EESC Opinion and the Member States' Framework Decisions support the adoption of a Directive amending Directive 2013/34 / EU. According to the Commission Work Program for 2018, it is envisaged that the requirements for the disclosure of corporate tax information in the financial statements of certain types of undertakings should be regulated by the formal adoption of a new Directive.

Keywords: financial statements, disclosure, corporate tax

DISCLOSURE OF FINANCIAL REPORTING INFORMATION OF ENTERPRISES: A PREREQUISITE FOR ACHIEVING TAX TRANSPARENCY

Economic globalization and taxation are external factors influencing the appearance and nuances of standardization in business accounting that operate within different national economies. Accounting and financial reporting in Europe is closely linked to taxation. And if harmonization and alignment of accounting rules and requirements are observed globally mainly through the application of the IFRS model, taxation continues to be the leading national sovereignty. Even within the European Union, different national regimes for taxation of income and property of natural and legal persons still operate. Harmonization of direct taxation within the EU is a long-term strategy that began in the 1960s and has not yet been completed. In 2004, the European Commission launched the effective actions on alignment of corporate tax on companies operating in the EU. The basis for a tax strategy is the introduction of a "Common Consolidated Corporate Tax Base" (CCCTB), which is a set of rules for calculating the individual tax returns of each company (or branch), the consolidation of those results when there are other members of the group and the allocation of the consolidated tax base between the Member States concerned. The ultimate aim may be summed up in the OECD/EU 'mantra'

that tax should be paid in the country where the profits are generated⁹⁹. A number of political and economic measures have been formally formulated in the joint work of the European regulators and the OECD to achieve tax transparency, including regulating the obligation for certain types of undertakings to disclose information on their corporate tax and income tax.

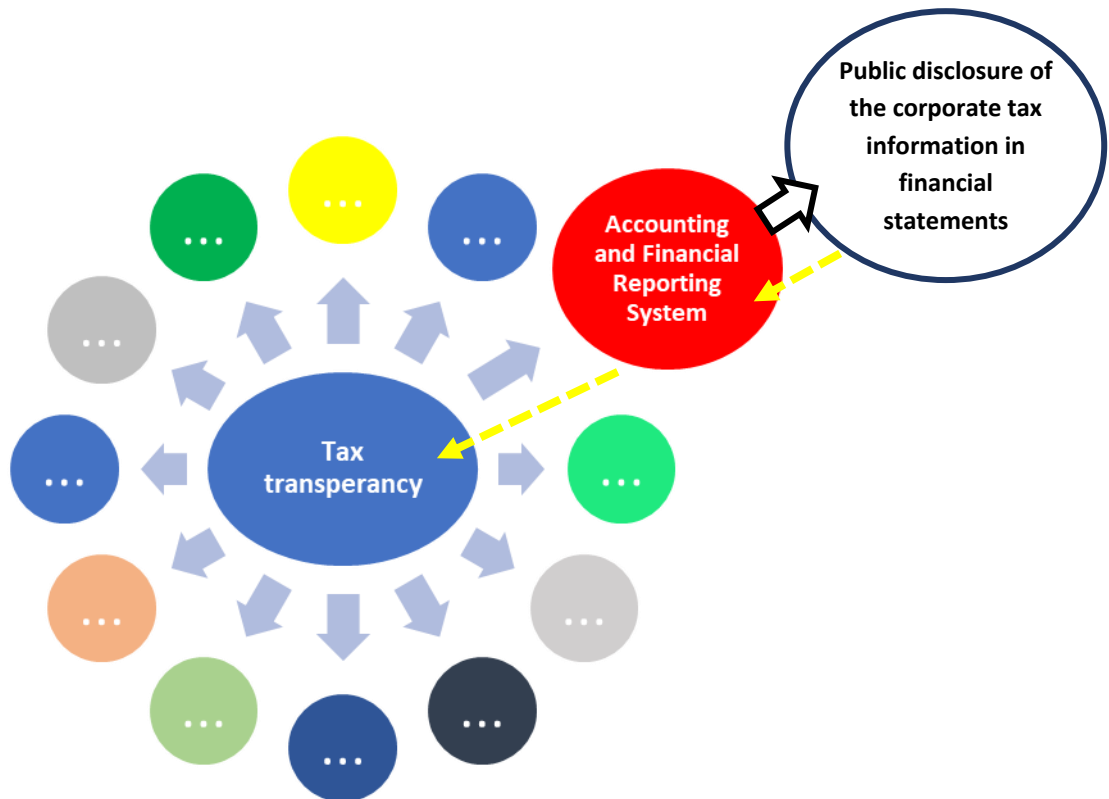


Fig. 1. Public disclosure of the corporate tax information: basis and the result of tax transparency

VIEWS ON TAX TRANSPARENCY BY DECLARING CORPORATE TAX INFORMATION FROM MULTINATIONAL COMPANIES

Political and regulatory authorities in the EU and internationally highlight, above all, the benefits of tax transparency, including the benefits of public disclosure of corporate tax by multinational corporations. Non-governmental organizations and other civil society organizations also support the country-by-country public declaration, in which the information provided for each country should be as detailed as possible. In their view, the monitoring of tax practices will encourage corporate and social responsibility, strengthen the democratic process, and will likely encourage multinational companies to allocate their tax bases in a fairer way. The EU's tax reform also has its opponents. The adoption of a directive amending Directive 2013/34 / EC is delayed over time due to a number of obstacles, constraints and threats to sustainable development and economic growth in the EU. Among the opponents of the new Directive is the Association of Chambers of Commerce and Industry¹⁰⁰, whose position is strongly negative in relation to the introduction of requirements for the publication of information on accrued and paid corporation tax in each country by multinational companies. In their view, disclosure of such information would adversely affect competition, create conditions for disclosure of information that constitutes trade secrets. For example, if a European company works on a major project in an EU Member State and publishes information on revenue, costs and taxes paid in connection with the implementation of this project, competitors of this company on a global level will receive information that will allow them to change their project structures and focus on the market niche or segment of the European company. If competitors are from non-EU countries, the European company under consideration will not be able to receive reciprocal information about their competitors. This results in an information imbalance which leads to significant competitive disadvantages for the European economy and puts at risk the investment objectives of the business. As a result, EU Member States' tax revenues could also be significantly affected if the companies concerned decide to redirect their investment projects outside the EU.

⁹⁹ KPMG. Country-by-Country Reporting, 2016, www.kpmg.com

¹⁰⁰ EUROCHAMBRES, Comment on a proposal for a Directive of European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertaking and branches. Position Paper. 24 June 2016.

KEY STEPS IN THE PROCESS OF DEVELOPING AND ADOPTING A DIRECTIVE AMENDING DIRECTIVE 2013/13 / EU

Within the EU, the discussion on the need for regulatory regulation of the requirement to disclose corporate tax information by certain types of undertakings through the amendment of Directive 2013/34 / EU goes through a number of formal and informal meetings, discussions and researches. The more significant could be the following legislative decisions:

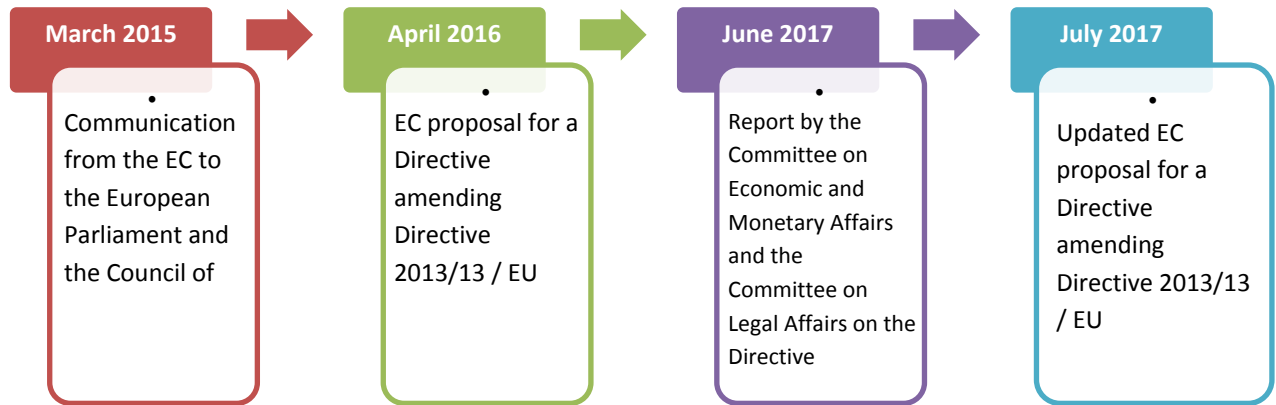


Fig. 2. Main stages prior to adoption of the new Directive

In its **Communication № COM (2015) 136 final** of the European Commission to the European Parliament and the EU Council of 18 March 2015, a package of tax transparency measures is formally proposed to address the most urgent issues to be addressed, and to deepen the Council's deliberations and to give a new impetus to the proposal for a Common Consolidated Corporate Tax Base. This document initiates the following initiatives:

1. Introducing strict transparency for tax advice (acts).
2. Streamline legislation on automatic information exchange.
3. Assessment of possible additional transparency initiatives by disclosing information in the financial statements.

4. Revision of the Code of Conduct for Business Taxation.
5. Effort to better quantify the difference between the due and the actually collected corporate tax.
6. Promote greater transparency in the field of taxation internationally.

On 12 April 2016, the EC published **Proposal № COM (2016) 168 final** on a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards the disclosure of corporate tax information by certain undertakings and branches. The purpose of this Directive is to impose requirements on large multinational companies operating on the territory of the EU Member States to draw up and publish on their websites a declaration detailing for each country information on the nature of the activity carried out, the number of employees, the net sales revenue, the profit or loss before tax, the amount of corporation tax charged, the amount of corporation tax paid for the financial year in question. The EC proposal has passed the procedure for consideration by the EP and the EU Council. Independent reports of the Committee on Economic and Monetary Affairs and of the Committee on Legal Affairs on the Directive were also drafted. During the period from November 2016 to January 2017, there were some contradictions between the views of the EU Council Legal Service and the Legal Affairs Committee on the majority vote and adoption of the Proposal¹⁰¹.

The next step was made on 12 June 2017 when the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs jointly adopted their own report on the Proposal and submitted it to the EP for endorsement. The two committees jointly made some changes to the Proposal, issued by the European Commission in April 2016, expanded its scope with additional requirements.

For its part, the European Parliament, in a meeting held on 4 July 2017, did not accept at first reading the Proposal for a Directive on public disclosure of corporation tax by multinational companies and the negotiations with the EU Council have not been started. The legislative act has been referred for interinstitutional negotiations to the competent committee pursuant to Article 59 (4), subparagraph 4.

¹⁰¹ See Council of the EU, Opinion of the Legal Service, on a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34 / EU as regards the disclosure of corporate tax information by certain undertakings and branches, Brussels, 11 November 2016

In terms of content, the guiding leitmotiv of the Proposal is that corporate income taxation is to be made there (on the territory) where value is created. This requires a more comprehensive approach to country-based reporting, based on public disclosure of information by the undertakings concerned. Additional disclosure of corporate tax information is seen as a form of enhanced public control over corporate accountability, corporate social responsibility, tax contributions to welfare and fair tax competition in the EU.

According to the EC's proposal for the implementation of the new Directive, Member States will require parent undertakings/subsidiaries/branches whose activity is governed by their national law and have a consolidated net turnover equal to or greater than EUR 750 000 000, and undertakings governed by their national law which are not affiliated undertakings and whose net turnover is equal to or greater than EUR 750 000 000, annually to produce and make publicly available, without payment, a statement of corporate tax information, which is submitted in the form of a common form and contains information written for each tax jurisdiction separately.

The Statement of Corporate Tax Information must be published free of charge in the form of a common form in an open format and be publicly available on the website of the undertaking by the date of its publication in at least one of the official languages of the Union. On the same date, the undertaking is also required to submit the declaration in a public register managed by the Commission.

For Member States which have not adopted the euro, the amount in national currency equivalent to EUR 750 000 000 shall be obtained by applying the exchange rate published in the Official Journal of the European Union in force on the date of entry into force of the Directive.

For example, if the multinational company A-D operates in the territory of four EU Member States (A, B, C, D) and fulfills the criteria of the Directive, then that company will be required to disclose further as an annex to its financial statements, information systemized at the level of tax jurisdictions, as shown in Fig. 3.

Indicators / Disclosed information	Tax jurisdictions			
	A	B	C	D
1. A brief description of the nature of the activity being carried out				
2. Geographical location (seat and management address, location of the activity being performed)				
3. Number of full-time employees (recalculated)				
4. Amount of fixed assets				
5. The amount of net turnover, including:				
- turnover realized with related parties				
- turnover realized with unrelated parties				
6. Registered (declared) capital				
7. The amount of profit or loss before corporate tax				
8. The amount of the accrued corporate tax				
9. The amount of the corporate tax paid				
10. Information on received public payments and donations made to political, political organizations or foundations for political purposes				
12. Information on preferential tax treatment applied, "patent-box" regimes or equivalent regimes				

Fig. 3. Content aspect of a statement with corporate tax information

The corporate tax return statement should contain information on all the activities of an undertaking or related undertakings in a group controlled by a parent undertaking. Information should be limited to what is necessary to allow effective public control, without disclosure, to give rise to unjustified risks to competitiveness or misinterpretation of the undertakings concerned. Where the information to be disclosed is a trade secret, then the undertaking shall have the right to request authorization from the competent authority where it is established not to disclose the full scope of the information. Auditors or auditing firms are required to verify that the declaration of corporate tax information is submitted (in procedural and substantive terms) in accordance with the accessibility requirements of the undertaking's website and in accordance with the financial information presented for auditing. Violations of the requirements for declaring corporate tax information from undertakings and branches leading to the imposition of sanctions by Member States in accordance with Directive 2013/34 / EU should be recorded in a public register managed by the Commission. These penalties may take the form of administrative fines, exclusion from public calls for tenders and from the provision of EU Structural Funds.

ESTIMATES, RECOMMENDATIONS AND CRITICAL REMARKS TO PUBLIC DISCLOSURE REQUIREMENTS FOR CORPORATE TAX INFORMATION

The main findings and assessments made by the EU institutions and their supporters regarding the introduction of corporate tax declarations by multinational companies are primarily focused on its positive aspects. Public country declaration is accepted as:

- an effective tool to increase transparency regarding the activities of multinational undertakings;
- giving the public an opportunity to assess the impact of large companies on the real economy;
- helping shareholders to properly assess the risks taken by companies;
- constitutes a reliable basis for developing investment strategies based on accurate information;
- enhancing the ability of decision-makers to assess the effectiveness and impact of national legislation;
- having a positive impact on employees' right to information and consultation provided for in Directive

2002/14/EC.

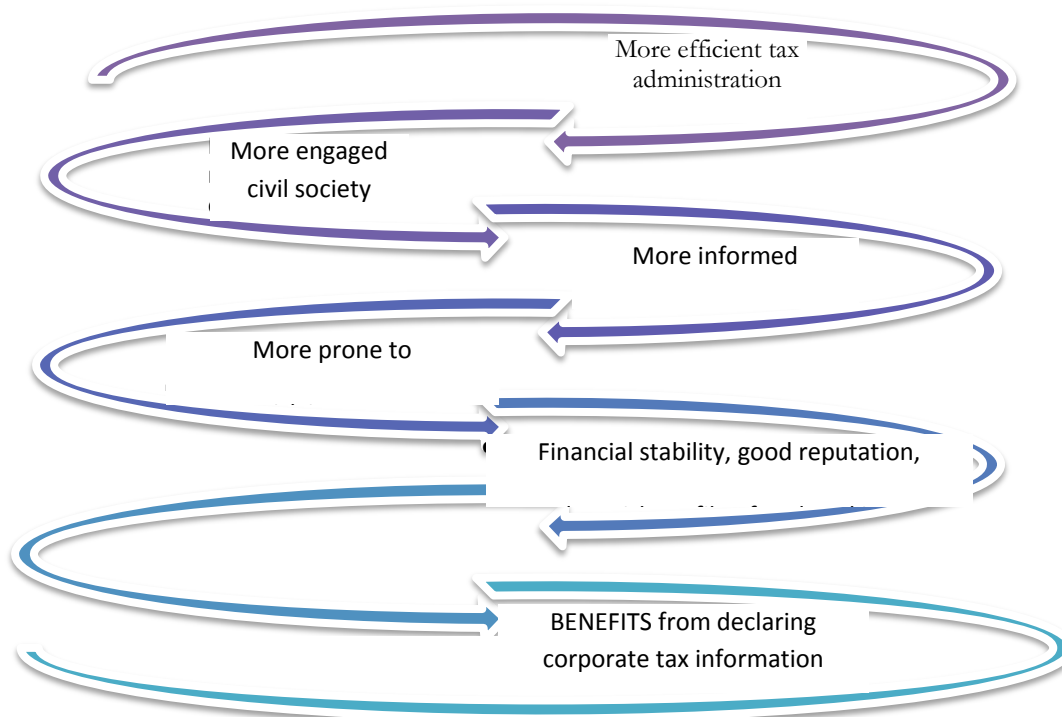


Fig. 4. Benefits of declaring corporate tax information

An expert study of Financial Times reveals¹⁰² different points of view on declaring corporate tax information. While George Osborne, UK chancellor of the exchequer, earlier this year lent his support to the introduction of such rules, the idea has raised hackles in some other EU nations amid concern about its impact on companies' competitiveness. According to Wolfgang Schäuble, Germany's finance minister, sharing of country-by-country data between national tax authorities should not lead to information being made public. Employers' groups have also warned that transparency requirements could put EU companies at a disadvantage to rivals based in other parts of the world. Crucially, data on activities outside the EU would not have to be broken down country by country. Sven Giegold, a German member of the European Parliament's Green group, said that this limitation meant that "tax havens outside of the EU would remain in darkness". According to him "This is not the country-by-country reporting the European Parliament demanded. The commission has to revise its final proposal". Also at issue is the €750m threshold, which means that only 10-15 per cent of multinationals will be captured by the rules, according to EU data. This sample would, nevertheless, account for more than 90 per cent of corporate revenues in Europe. So, requiring multinational corporations to report only on what they do in the EU "would be meaningless."

At the beginning of May 2018, the Directive has not yet been adopted as institutional disputes continue and no consensus has been reached on the following three issues:

- the legal basis for the preparation and publication of the Proposal for a Directive;

¹⁰² The Financial Times Limited 2016. Brussels to force big companies to disclose more tax details. Plans for multinationals to show taxes and profits in individual countries limited to Europe.

- nature, content and methodology for determining turnover (net sales revenue) for undertakings established in and outside the EU;
- the obligation of publicity and accessibility of the declaration via a website, according to some Member States, is an additional administrative burden for undertakings.

CONCLUSION

Inter-institutional negotiations are to be held through a “tripartite meeting” - EC - EP - Council of the EU on how to form a majority in the vote on the Directive. It is still “not clear whether a political compromise will be reached”¹⁰³. If the Directive is adopted at the EU Council meeting scheduled for May 2018, it will also take some time to transpose it into the national legislation of the EU Member States. It should also have an impact on the activities of the directly affected parties – multinational companies whose headquarters are located both within the EU and outside the EU with a consolidated net turnover equal to or above EUR 750 million.

The reports of the EU institutions confirm the hypothesis that the expected benefits of adopting and implementing the Directive are significant for society. Public disclosure of corporate tax information by multinational companies will contribute to raising public confidence in the fairness of tax systems. Tax transparency will strengthen the corporate responsibility of companies by making public their tax contribution to local well-being. In this way, companies can be encouraged to pay taxes where they actually make profits. The declaration of information on accrued and paid corporate tax per country is expected to make a major contribution to achieving more loyal tax competition in the EU. Enhanced transparency in corporate taxation is not expected to have a significant impact on growth and jobs in the EU. Negative effects associated with the increase in company costs and administrative burden arising from country-by-country disclosure are not expected, since, under the current Administrative Cooperation Directive, larger corporations provide the tax authorities with information by country. They will be able to prepare their public declarations by country based on this data.

Discussions among the business community and the scientific community on the benefits and costs of introducing the country-by-country corporate tax return reveal that the benefits are largely uncertain as tax planning activities are based on a number of gaps in national and international tax law. Moreover, the expected benefits do not lie on a sound theoretical and scientific basis. However, costs appear more measurable and more significant. Therefore, the declaration of corporate tax country by country „cannot be regarded as a convincing measure to combat aggressive international tax planning of multinational companies”¹⁰⁴.

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¹⁰³ EY, European Parliament votes in favor of public Country-by-Country reporting in first reading, Global Tax Alert, July 2017.

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