



# **GUIDANCE NOTE ON THE CBCR DIRECTIVE**

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The Malta Business Registry

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The CbCR Directive, formally referred to as Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (also referred to as “Public CbCR”), has been transposed into the Companies Act (Cap. 386 of the Laws of Malta) (the “Act”) by virtue of Act XVIII of 2024. The applicable provisions are found in Articles 213B, 213C, 213D and the Fourth Schedule to the Act.

The following are some frequently asked questions and answers which may aid companies and the respective stakeholders in the performance of their duties as required by the Act.

## **Clarification on Scope and Applicability**

**Q: How does one determine if an ultimate parent undertaking (“UPU”) is required to comply with Public CbCR?**

**A:** Public CbCR applies to MNE groups with consolidated annual revenues on their balance sheet date of €750 million or more in each of the last two consecutive financial years, as reflected in their annual consolidated financial statements.

EU/EEA based groups with operations in EU Member States / EEA jurisdictions are required to comply.

**Q: If a UPU derived an amount of revenue that is less than the revenue threshold, is the said UPU exempt from all Public CbCR requirements?**

**A:** Yes, if the total consolidated group revenue on its balance sheet date falls below €750 million in each of the last two consecutive financial years as reflected in its consolidated financial statements, Public CbCR requirements do not apply. Therefore, a single year of falling below the threshold is not enough to immediately exempt the group; it must consistently remain below €750 million for each of the last two consecutive financial years.

**Q: What are the obligations of a standalone undertaking?**

**A:** The same requirements apply to a standalone undertaking situated in an EU Member State/ EEA jurisdiction. When the revenue of the undertaking exceeds €750 million on its balance sheet date for each of the last two consecutive financial years as reflected in its financial statements, the undertaking shall be obliged to draw up, publish and make accessible the report on income tax information.

**Q: Are there any specific exemptions from the obligation to provide the income tax information in compliance with Public CbCR?**

**A:** The Public CbCR obligations do not apply in the event that:

1. The standalone company or UPU and their affiliated undertakings where such undertakings, and their branches (if any) are established or have a fixed place of business or permanent business activity in a single Member State/ EEA jurisdiction and no other tax jurisdiction.

2. The standalone company or UPU or their affiliated undertakings already disclose a comprehensive report under specific EU banking and investment regulations (Article 89 of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms). To qualify for this exemption, the existing report must cover all business activities of the entity and in the case of UPU, the disclosure must encompass the activities of all affiliated undertakings included in their consolidated financial statements. Essentially, if these entities have already met their transparency obligations under specific EU banking and investment regulations, they are not required to duplicate that reporting under the Act.

**Q: From when is Public CbCR applicable?**

**A:** Although Public CbCR is transposed into national law, the companies falling within its scope have yet to report the income tax information. The law applies for the accounting periods commencing on or after 22 June 2024. The tax information should be published within 12 months of the balance sheet date of the financial year for which the report is drawn. Therefore, in scope companies will first report in the year 2026 (for financial years ended during 2025).

## **Clarification on Reporting Responsibilities**

**Q: Which company within a group is responsible for preparing and submitting the Public CbCR report on income tax information?**

**A:** Typically, the UPU of the multinational group is responsible for drawing up, publishing and making accessible the Public CbCR report. If the UPU is governed by the laws of Malta, then it would be responsible to draw up, publish and make accessible the report.

If the UPU is governed by the laws of a jurisdiction outside the EU/EEA, a large or medium-sized subsidiary company that is governed by the laws of Malta would be responsible to publish and make accessible the report in compliance with Article 213B(5) of the Act concerning that UPU. The same applies for Branches opened in Malta by undertakings governed by the laws of a jurisdiction outside the EU/EEA, in compliance with Article 213B(6).

Alternatively, the UPU governed by the laws of a jurisdiction outside the EU/EEA may opt to make accessible the tax information as detailed in the next Q&A.

**Q: Where should the Public CbCR report on income tax information be published and made accessible if the UPU is not governed by the laws of a Member State or law of a jurisdiction which is a member of the EEA?**

**A:** If the UPU is not governed by the laws of a Member State or laws of a jurisdiction which is a member of the EEA, the report needs to be filed with an EU member state/EEA jurisdiction in which the group operates. For instance, should a Maltese medium-

sized or large subsidiary undertakings be controlled by an UPU which is not governed by the laws of a Member State or of an EEA jurisdiction, the said Maltese medium-sized or large subsidiary company is required to file the Public CbCR report with the Maltese Registrar of Companies (the "Registrar"), in compliance with the details set out in Part II of the Fourth Schedule to the Act. It may be the case however that a UPU established in a non-EU Member State or non-EEA state draws up, publishes and makes accessible to the public the tax information in line with the criteria laid down in Article 213B(7) of the Act. The said UPU is also required to identify the name and registered office of a subsidiary/branch in the EU/EEA which has published the report in accordance with Public CbCR. This would exonerate the Maltese subsidiary from the obligation of filing a report.

**Q: What if the non-EU/EEA UPU does not provide the information to the Maltese subsidiary?**

**A:** In such a case, the subsidiary company is still required to draw up, publish and make accessible the Public CbCR report on income tax information, accompanied by a statement indicating that its UPC did not make the necessary information available. The same situation applies to branches registered in Malta by an UPU or standalone company formed and registered in a non-EU Member State or non-EEA state.

**Q: Does Public CbCR apply to a cell company?**

**A:** Cells forming part of a cell company do not have separate legal personality and are therefore not subject to the Public CbCR obligations. However, the cell company itself may be subject to Public CbCR if it meets the revenue thresholds.

**Q: What notification is required to be made to the Registrar by the directors?**

**A:** Article 213C of the Act requires that the directors or persons designated to carry out the disclosure formalities of companies, and which are subject to Articles 213B(1), (2) or (5) of the Act, inform the Registrar that the company they represent is an UPU, or standalone company, or subsidiary company, or an affiliated company, or a branch within the meaning of the provisions of Article 213B of the Act, and therefore are collectively responsible to draw up, publish and make accessible the report on income tax information.

A notification will not be required in Malta, in cases where the UPU which is drawing up and publishing the report is established in an EU Member State/ EEA jurisdiction.

However, in case of a Maltese medium-sized or large subsidiary or a qualifying branch which is part of a non-EU/EEA parented group, where the group opts for the multiple reporting exemption on the principles as set out in Article 213B(7) of the Act, and where the EU entity identified to publish the report is not Maltese, the Maltese subsidiary or branch must still file a notification with the Malta Business Registry, even though it is exempt from publishing the actual report. While the exemption under Article 213B(7) of the Act relieves the Maltese entity from local publication obligations because a designated EU entity forming part of the same group is filing the report in another EU

Member State, the Maltese directors are still bound by the disclosure formalities of Article 213C of the Act as they must formally notify the Registrar that the company is part of an in-scope non-EU/EEA parented group and explicitly identify the specific non-Maltese EU entity that has been designated to publish the report on the group's behalf.

## **Clarification on Data Required and Preparation**

### **Q: Which data must be included in the Public CbCR report?**

**A:** The report on income tax information in terms of Article 213B of the Act must include information relating to all activities of the standalone undertaking or UPU, including all the affiliated companies consolidated in the financial statements in respect of the relevant financial year as detailed in Part II of the Fourth Schedule to the Act. The said information includes, *inter alia*:

- Name of the company, financial year, currency and a list of all the subsidiaries consolidated in the financial statements of the UPU;
- Nature of activities;
- Number of employees on a full-time equivalent basis;
- Profit or loss before income tax;
- Income tax paid and accrued;
- Accumulated earnings;
- Revenues, calculated as:
  - o sum of 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;
  - o the income as defined by the financial reporting framework on the basis of which the financial statements are prepared, excluding value adjustments and dividends received from affiliated undertakings, whereby revenues calculated shall include transactions with related parties.

## **Clarification on Timing, Deadlines, Publication and Filing**

### **Q: When is the deadline for making accessible and publishing the Public CbCR report on income tax information?**

**A:** The Public CbCR report referred to in Article 213B of the Act is due within 12 months after the balance sheet date of the financial year for which the report is drawn up.

### **Q: How does the Public CbCR report on income tax information need to be published?**

**A:** The report must be made available to the public:

(1) Free of charge, on the website of:

- (a) the UPU governed by the laws of Malta where Article 213B(1) of the Act applies; or

- (b) the standalone undertaking governed by the laws of Malta where Article 213B(2) of the Act applies; or
  - (c) the subsidiary undertaking or an affiliated undertaking where Article 213B(5) of the Act applies; or
  - (d) the branch or the undertaking which opened the branch or an affiliated undertaking where Article 213B(6) of the Act applies, as the case may be;
- (2) In an electronic reporting format that is machine-readable;
- (3) In at least one of the official languages of the EU;
- (4) And must remain accessible on that website for a minimum of 5 consecutive years.

In addition to the website, the report must be filed with the Registrar for registration on its website within 14 days of the date of online publication. The report is to be made accessible to the public by the Registrar in an electronic format, and free of charge to any third party located within the EU.

**Q: How does the Public CbCR report on income tax information need to be filed with the Registrar?**

**A:** Public CbCR report shall be filed electronically via email to: [cbcr.mbr@mbr.mt](mailto:cbcr.mbr@mbr.mt). The said email shall include:

- (a) Company name;
- (b) Company registration number;
- (c) Country where the UPU has its registered office;
- (d) Financial year covered by the report; and
- (e) Name and contact details of the person making the filings.

The report must be filed in XHTML format with Inline XBRL (iXBRL) tagging and must remain machine-readable in accordance with applicable EU requirements.

Reporting entities must remain solely responsible, *inter alia*, for:

- the completeness and accuracy of submitted information;
- compliance with applicable legal obligations;
- correctness of the XHTML/iXBRL tagging; and
- adherence to filing deadlines.

**Q: How is notification in terms of Article 213C to be made?**

**A:** Any notification shall be made to the Registrar via email to: [cbcr.mbr@mbr.mt](mailto:cbcr.mbr@mbr.mt) and shall include, *inter alia*, the following information:

- (a) Company name;
- (b) Company registration number;
- (c) Financial year covered by the notification;
- (d) Details as to the name, registration number and registered address of the non-EU/EEA parented group which is in scope and whether it is an UPU or a standalone undertaking or a subsidiary undertaking or an affiliated undertaking or a branch;
- (e) Details as to the name, registration number and registered address of the non-Maltese EU entity that has been designated to publish the report on the group's behalf; and
- (f) Name and contact details of the person making the notification.

**Q: Are there penalties for late submissions or inaccurate information included in the Public CbCR report on income tax information?**

**A:** Yes, the penalties set out in the Eleventh Schedule to the Act apply.

## **Clarification on Public vs. Confidential Reporting**

**Q: Can a company omit commercially sensitive information from the Public CbCR report on income tax information?**

**A:** Under the Public CbCR, companies within the scope must publicly disclose specific tax information. However, certain information may be temporarily omitted in instances where the disclosure would be seriously prejudicial to the commercial position of the company in terms of Paragraph 8 of Part II of the Fourth Schedule to the Act. In any case, information omitted shall then be made public in a later report within no more than 5 years from the date of its original omission.

## **Clarification on Local Reporting and Multijurisdictional Operations**

**Q: Are groups having subsidiaries in multiple EU Member States / EEA jurisdictions, required to publish the Public CbCR report on income tax information in each EU Member State / EEA state?**

**A:** No, only one CbCR report is required to be submitted per group by the designated reporting entity insofar that all the required tax information has been submitted to the relevant authority within the EU/ EEA and made available to the public.

**Q: Is the auditor required to express an opinion on the tax information included in the Public CbCR report on income tax information?**

**A:** No, in terms of Maltese company law, the auditors' report is required to state whether for the respective financial year for which the audited financial statements were prepared, the respective company was required to publish the Public CbCR report, and if so, whether such report was indeed prepared.

*Clear communication and adherence with the respective applicable law provisions will help companies align with Public CbCR requirements and avoid penalties. These short Q&As do not fulfil the purpose of the legal and technical requirements on the subject matter and should not be interpreted as a replacement or part thereof of the company law framework. They simply serve to help in familiarising the companies' officers, accounting professionals and other stakeholders in the field. Legal and tax advisors can provide support to ensure that all reporting obligations are met across jurisdictions. It is always recommended to seek the required professional advice. The Malta Business Registry shall not be held liable to any consequences or losses or damages or other claims resulting from this document.*

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