



STATUTORY INSTRUMENTS.

S.I. No. 322 of 2023

EUROPEAN UNION (DISCLOSURE OF INCOME TAX INFORMATION
BY CERTAIN UNDERTAKINGS AND BRANCHES) REGULATIONS
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I, SIMON COVENEY, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021¹ amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, hereby make the following regulations:

PART 1
Preliminary and general

Citation, commencement and application

1. (1) These Regulations may be cited as the European Union (Disclosure of Income Tax Information by Certain Undertakings and Branches) Regulations 2023.

(2) These Regulations shall come into operation on the 22nd day of June 2023.

(3) Where these Regulations impose an obligation in relation to a financial year, or to a number of consecutive financial years, that obligation shall apply in relation to financial years beginning on or after 22 June 2024.

Interpretation

2. (1) In these Regulations –

“Act of 2014” means the Companies Act 2014 (No. 38 of 2014);

“branch” means a branch (other than a branch that is closed) that is established, opened, registered or incorporated in the State by an undertaking that is –

- (a) of a legal form comparable with the types of undertakings listed in Annex I of the Directive, and
- (b) not governed by the laws of a Member State;

“council list” means the Council Conclusions on the EU List of Non-Cooperative Jurisdictions for Tax Purposes;

“Directive” means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013², as amended by –

¹ O.J. No. L 429, 1.12.2021, p. 1

² O.J. No. L 182, 29.6.2013, p. 19

- (a) Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014³,
- (b) Council Directive 2014/102/EU of 7 November 2014⁴,
- (c) Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021¹, and
- (d) Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022⁵;

“director” has the meaning it has in section 2(1) of the Act of 2014;

“first undertaking” has the meaning given to it in Regulation 6(1);

“large undertaking” has the meaning it has in Article 3(4) of the Directive;

“medium-sized undertaking” has the meaning it has in Article 3(3) of the Directive;

“Registrar” has the meaning it has in the Act of 2014;

“report on income tax information” means a report prepared in accordance with Regulation 13;

“revenue” has the meaning it has in Article 48a(2) of the Directive;

“second undertaking” has the meaning given to it in Regulation 6(1).

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.

PART 2

Undertakings and branches required to report on income tax information

Obligation of certain ultimate parent undertakings and standalone undertakings to report on income tax information

3. (1) This Regulation applies to an undertaking constituted under, or otherwise governed by, the laws of the State where –

- (a) it is –
 - (i) an ultimate parent undertaking, or
 - (ii) a standalone undertaking,
 and
- (b) the revenue on the undertaking’s balance sheet date, as reflected in its financial statements or consolidated financial statements, as the case may be, exceeds €750,000,000 in each of 2 consecutive financial years.

³ O.J. No. L 330, 15.11.2014, p. 1

⁴ O.J. No. L 334, 21.11.2014, p. 86

⁵ O.J. No. L 322, 16.12.2022, p. 15

(2) Subject to Regulations 4(1) and 5, an undertaking to which this Regulation applies shall publish and make accessible to the public a report on income tax information relating to itself as regards –

- (a) the latter of the financial years referred to in subparagraph (1)(b), and
- (b) each subsequent financial year.

Exemption from obligation under Regulation 3 in certain circumstances

4. (1) Where the revenue on an undertaking's balance sheet date, as reflected in its financial statements or consolidated financial statements, as the case may be, does not exceed €750,000,000 in each of 2 consecutive financial years, the undertaking shall not be required to comply with Regulation 3(2)(b) in respect of –

- (a) the latter of those consecutive financial years, and
- (b) each subsequent financial year in which the revenue on the undertaking's balance sheet date, as reflected in its consolidated financial statements, does not exceed €750,000,000.

(2) Where, in a financial year following a financial year referred to in subparagraph (a) or (b) of paragraph (1), the revenue on the undertaking's balance sheet date, as reflected in its consolidated financial statements, exceeds €750,000,000, Regulation 3(2) shall, subject to paragraph (1) and Regulation 5, apply to –

- (a) that following financial year, and
- (b) each subsequent financial year.

Circumstances outside the scope of obligation under Regulation 3

5. An undertaking shall not be required to comply with Regulation 3(2) where –

- (a) the undertaking, and each of its affiliated undertakings (including branches of the undertaking and branches of its affiliated undertakings), are established, or have their fixed places of business or permanent business activity, within the territory of a single Member State and in no other tax jurisdiction, or
- (b) the undertaking, or any of its affiliated undertakings, discloses a report in accordance with Article 89 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013⁶ that encompasses information on the activities of the undertaking and all of its affiliated undertakings included in the consolidated financial statements.

⁶ O.J. No. L 176, 27.6.2013, p. 338

Obligation of certain medium and large sized undertakings to report on income tax information

6. (1) This Regulation applies to an undertaking (in this Regulation referred to as the “first undertaking”) constituted under, or otherwise governed by, the laws of the State where –

- (a) it is a medium-sized undertaking or a large undertaking,
- (b) it has an ultimate parent undertaking that is not constituted, or otherwise governed by, the laws of a Member State (in this Regulation referred to as the “second undertaking”), and
- (c) the revenue on the second undertaking’s balance sheet date, as reflected in its consolidated financial statements, exceeds €750,000,000 in each of 2 consecutive financial years.

(2) Subject to Regulations 7(1) and 10, the first undertaking shall publish and make accessible to the public a report on income tax information relating to the second undertaking as regards –

- (a) the latter of the financial years referred to in paragraph (1)(c), and
- (b) each subsequent financial year.

(3) Where the report referred to in paragraph (2), or information required by the first undertaking to comply with paragraph (2), is not available to the first undertaking, it shall request the second undertaking to provide it with the report, or the information required in order to comply with paragraph (2), as the case may be.

(4) Where the second undertaking does not provide the first undertaking with the report, or all the information, requested under paragraph (3), the first undertaking shall –

- (a) using such information as is available to it, publish and make accessible the report in accordance with paragraph (2), and
- (b) include in the report a statement that the second undertaking did not provide the first undertaking with all the information requested from it under paragraph (2).

Exemption from obligation under Regulation 6 in certain circumstances

7. (1) Where the revenue on the second undertaking’s balance sheet date, as reflected in its consolidated financial statements, does not exceed €750,000,000 in each of 2 consecutive financial years, the first undertaking shall not be required to comply with Regulation 6(2)(b) in respect of –

- (a) the latter of those consecutive financial years, and
- (b) each subsequent financial year in which the revenue on the second undertaking’s balance sheet date, as reflected in its consolidated financial statements, does not exceed €750,000,000.

(2) Where, in a financial year following a financial year referred to in subparagraph (a) or (b) of paragraph (1), the revenue on the second undertaking's balance sheet date, as reflected in its consolidated financial statements, exceeds €750,000,000, Regulation 6(2) shall, subject to paragraph (1) and Regulation 10, apply to –

- (a) that following financial year, and
- (b) each subsequent financial year.

Obligation to report on income tax information in relation to certain branches

8. (1) This Regulation applies to a branch where –

- (a) its net turnover exceeds the amount referred to in section 280A(3)(a) of the Act of 2014 in each of 2 consecutive financial years,
and
- (b) the undertaking that established, opened, registered or incorporated the branch is of a legal form comparable with the types of undertakings listed in Annex I to the Directive and is either –
 - (i) a standalone undertaking that is not governed by the law of a Member State and the revenue of which, on its balance sheet date, as reflected in its consolidated financial statements, exceeds €750,000,000 in each of 2 consecutive financial years,
or
 - (ii) an undertaking in a group –
 - (I) the consolidated revenue of which, on its balance sheet date, as reflected in its consolidated financial statements, exceeds €750,000,000 in each of 2 consecutive financial years, and
 - (II) the ultimate parent undertaking of which –
 - (A) is not governed by the law of a Member State, and
 - (B) does not have a subsidiary undertaking that is a medium-sized undertaking or a large undertaking.

(2) Subject to paragraphs (1) and (2) of Regulation 9, and to Regulation 10, a branch to which this Regulation applies shall publish and make accessible to the public a report on income tax information relating to the standalone undertaking referred to in paragraph (1)(b)(i) or the ultimate parent undertaking referred to in paragraph (1)(b)(ii)(II), as the case may be, as regards –

- (a) the latter of the financial years referred to in paragraph (1)(b)(i) or (1)(b)(ii)(I), as the case may be, and

(b) each subsequent financial year.

(3) Where the report referred to in paragraph (2), or information required by a branch to comply with paragraph (2), is not available to the branch, a relevant person of the branch shall request the standalone undertaking referred to in paragraph (1)(b)(i) or the ultimate parent undertaking referred to in paragraph (1)(b)(ii)(II), as the case may be, to provide the relevant person with the report or the information required in order to comply with paragraph (2).

(4) Where the standalone undertaking referred to in paragraph (1)(b)(i) or the ultimate parent undertaking referred to in paragraph (1)(b)(ii)(II), as the case may be, does not provide the relevant person with the report, or all the information, requested under paragraph (3), the branch shall –

- (a) using such information as is available to it, publish and make accessible the report in accordance with paragraph (2), and
- (b) include in the report a statement that the standalone undertaking referred to in paragraph (1)(b)(i) or the ultimate parent undertaking referred to in paragraph (1)(b)(ii)(II), as the case may be, did not provide all the information requested from it under paragraph (3).

(5) In this Regulation, in relation to a branch, “relevant person” means –

- (a) where the branch has notified or delivered particulars or matters to the Registrar in accordance with section 1302(2)(g) of the Act of 2014, a person referred to in subsection (2) of that section, or
- (b) in any other case, a person designated to carry out the disclosure formalities provided for in Article 41 of Directive (EU) 2017/1132 of 14 June 2017⁷ in respect of the branch.

Exemption from obligation under Regulation 8 in certain circumstances

9. (1) Where, in each of 2 consecutive financial years, a branch’s net turnover does not exceed the amount referred to in section 280A(3)(a) of the Act of 2014, the branch shall not be required to comply with Regulation 8(2)(b) in respect of -

- (a) the latter of those consecutive financial years, and
- (b) each subsequent financial year in which the branch’s net turnover does not exceed the amount referred to in section 280A(3)(a) of the Act of 2014.

(2) Where, in each of 2 consecutive financial years, the revenue, or consolidated revenue as the case may be, of the undertaking that established, opened, registered or incorporated a branch, on the undertaking’s balance sheet date, as reflected in its consolidated financial statements, does not exceed €750,000,000, the branch shall not be required to comply with Regulation 8(2)(b) in respect of –

- (a) the latter of those consecutive financial years, and

⁷ O.J. No. L 169, 30.6.2017, p. 46

- (b) each subsequent financial year in which the revenue on the balance sheet date of the undertaking that established, opened, registered or incorporated the branch, as reflected in its consolidated financial statements, does not exceed €750,000,000.

(3) Where, in a financial year following a financial year referred to in subparagraph (a) or (b) of paragraph (1), a branch's net turnover is equal to or greater than the amount referred to in section 280A(3)(a) of the Act of 2014, Regulation 8(2) shall, subject to paragraph (1), paragraph (2) and Regulation 10, apply to –

- (a) that following financial year, and
- (b) each subsequent financial year.

(4) Where, in a financial year following a financial year referred to in subparagraph (a) or (b) of paragraph (2), the revenue on the balance sheet date of the undertaking referred to in that paragraph, as reflected in its consolidated financial statements, exceeds €750,000,000, Regulation 8(2) shall, subject to paragraph (1), paragraph (2) and Regulation 10, apply to –

- (a) that following financial year, and
- (b) each subsequent financial year.

Avoidance of double-reporting in certain circumstances

10. (1) Regulation 6(2) shall not apply to a first undertaking where the second undertaking publishes a report on income tax information in accordance with paragraph (3).

(2) Regulation 8(2) shall not apply to a branch where the undertaking that established, opened, registered or incorporated the branch publishes a report on income tax information in accordance with paragraph (3).

(3) A report on income tax information under this Regulation shall –

- (a) no later than 12 months after the balance sheet date of the financial year in respect of which it is drawn up, be made accessible to the public, free of charge and in an electronic reporting format which is machine readable –
 - (i) on the website of the undertaking referred to in paragraph (1) or (2), as the case may be, or
 - (ii) on the website of the Registrar in accordance with Regulation 11(3),
- (b) be in at least one of the official languages of the European Union,
- (c) where it is wholly or partly in a language other than English or Irish, be accompanied by a translation of the report into English or Irish or both, and
- (d) identify –

- (i) the name and the registered office of an undertaking that –
 - (I) is constituted, or otherwise governed by, the laws of a Member State,
 - (II) is a subsidiary of the undertaking publishing the report, and
 - (III) has published a report in accordance with Article 48d(1) of the Directive,
- or
- (ii) the name and address of a branch that –
 - (I) is constituted, or otherwise governed by, the laws of a Member State,
 - (II) is a branch of the undertaking publishing the report, and
 - (III) has published a report in accordance with Article 48d(1) of the Directive.

Requirements regarding publication and accessibility of report

11. (1) Where an undertaking is required under these Regulations to publish and make available a report on income tax information in respect of a financial year, or to make a statement under Regulation 6(4) or 8(4), it shall –

- (a) do so no later than 12 months from the balance sheet date in that financial year,
- (b) subject to paragraph (3), make the report or statement, as the case may be, publicly available free of charge in English or Irish or both on the website of –
 - (i) where Regulation 3 applies, the ultimate parent undertaking or the standalone undertaking, as the case may be,
 - (ii) where Regulation 6 applies, the first undertaking, or an affiliated undertaking of the first undertaking, or
 - (iii) where Regulation 8 applies, the branch, the undertaking that established, opened, registered or incorporated the branch in the State, or any affiliated undertaking of that undertaking.

(2) An undertaking that makes a report or statement available on a website in accordance with paragraph (1)(b) shall ensure that the report or statement, as the case may be, remains publicly available free of charge in English or Irish or both on that website for a continuous period of no less than 5 years from the date it was first made available on the website.

(3) An undertaking required under these Regulations to publish and make available a report on income tax information in respect of a financial year, or to

make a statement under Regulation 6(4) or 8(4), shall not be required to comply with paragraph (1)(b) where –

- (a) the report or statement is published free of charge and in an electronic reporting format which is machine-readable on the website of the Registrar no later than 12 months from the balance sheet date of the financial year to which it relates, and
- (b) a notice that the report or statement has been published in accordance with this paragraph, and a link to the address of the website of the Registrar on which the report is made available in accordance with paragraph (a), are published free of charge for a continuous period of no less than 5 years from the date it was first made available on the website of –
 - (i) where Regulation 3 applies, the ultimate parent undertaking or the standalone undertaking, as the case may be,
 - (ii) where Regulation 6 applies, the first undertaking, or an affiliated undertaking of the first undertaking, or
 - (iii) where Regulation 8 applies, the branch, the undertaking that established, opened, registered or incorporated the branch in the State, or any undertaking affiliated with that undertaking.

Requirements on undertakings not otherwise in scope of Regulations

12. (1) This Regulation applies to –
 - (a) an undertaking that is notified under paragraph (5),
 - (b) a branch that serves no other objective except to avoid or circumvent the reporting requirements in these Regulations or the Directive, and
 - (c) a subsidiary undertaking in the State that serves no other objective except to avoid or circumvent the reporting requirements in these Regulations or the Directive.
- (2) An undertaking to which this Regulation applies shall –
 - (a) where it is a branch, comply with these Regulations as if it was a branch referred to in Regulation 8,
 - (b) where it is a subsidiary undertaking and is not a branch, comply with these Regulations as if it was a first undertaking referred to in Regulation 6, and
 - (c) in any other case, comply with these Regulations as if it was an ultimate parent undertaking referred to in Regulation 3.
- (3) Where the Corporate Enforcement Authority reasonably believes that a branch or undertaking in the State serves no other objective except to avoid or circumvent the reporting requirements in these Regulations or the Directive, it may serve notice on the branch or undertaking stating that it is of that belief.

(4) A branch or undertaking on which a notice under paragraph (3) is served –

- (a) may, within 28 days of receiving the notice, provide the Corporate Enforcement Authority with documentation or information in writing explaining why it believes that the belief referred to in the notice is inaccurate, and
- (b) shall not provide the Corporate Enforcement Authority with any documentation or information under this Regulation that it knows to be false in a material particular.

(5) Where the Corporate Enforcement Authority, having regard to documentation or information (if any) received under paragraph (4), is of the opinion that the undertaking on which a notice under paragraph (3) is served serves no other objective except to avoid or circumvent the reporting requirements in these Regulations or the Directive, it may, after the expiry of the period referred to in paragraph (4)(a) and no later than 42 days from the date of the notice under paragraph (3), notify the undertaking that it is an undertaking to which this Regulation applies.

(6) For the purpose of this Regulation –

- (a) the Corporate Enforcement Authority may serve a document on a branch or undertaking –
 - (i) by leaving it at or sending it by post to the place of business of the branch or the registered office of the undertaking, or
 - (ii) if the branch or undertaking has not given notice to the Registrar of the situation of its registered office, by delivering it to the Registrar,
- (b) any document left at or sent by post to the place for the time being recorded by the Registrar as the situation of the place of business of the branch or the registered office of the undertaking shall be deemed to have been left at or sent by post to the registered office of the branch or undertaking notwithstanding that the situation of its registered office may have changed, and
- (c) it shall be the duty of the Registrar to enter on the register a document that has, by the means referred to in subparagraph (a)(ii), been served on a branch or undertaking.

PART 3

Content of report on income tax information

Matters to be included in report on income tax information

13. (1) Subject to Regulation 14, a report on income tax information (in this Regulation referred to as a “report”) relating to an undertaking shall include –

- (a) the information referred to in paragraph (2) in respect of all the activities of the undertaking, and
 - (b) where the undertaking has affiliated undertakings, the information referred to in paragraph (2) in respect of each affiliated undertaking consolidated in the financial statements of the undertaking in respect of the financial year to which the report relates.
- (2) The report shall include the following:
- (a) the name of –
 - (i) where the undertaking publishing the report is a standalone undertaking, that undertaking, or
 - (ii) where the undertaking publishing the report is not a standalone undertaking, the undertaking's ultimate parent undertaking;
 - (b) the financial year to which the report relates;
 - (c) the currency used for presentation of the report;
 - (d) where the report relates to an undertaking with an ultimate parent undertaking, a list of each undertaking consolidated in the financial statement of the ultimate parent undertaking, in respect of the financial year to which the report relates, that are established in –
 - (i) the Union, or
 - (ii) a tax jurisdiction that is, on the date of the report, included in Annex I or Annex II of the council list;
 - (e) a brief description of the nature of the activities of the undertaking;
 - (f) the number of the undertaking's employees on a full-time equivalent basis;
 - (g) the revenues, including revenue from transactions with related parties, calculated in either of the following ways:
 - (i) the sum of the following:
 - (I) the net turnover;
 - (II) other operating income;
 - (III) income from participating interests (excluding dividends received from affiliated undertakings);
 - (IV) income from other investments;
 - (V) income from loans forming part of the fixed assets;
 - (VI) other interest receivable;
 - (VII) similar income as listed in Annexes V and VI of the Directive, or

- (ii) 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;
 - (h) the amount of profit or loss before income tax;
 - (i) the amount of income tax accrued during the financial year to which the report relates, calculated as the current tax expense (not including deferred taxes or provisions for uncertain tax liabilities) recognised on the undertaking's taxable profits or losses of the financial year by undertakings and branches in each tax jurisdiction in which income tax is accrued;
 - (j) the amount of income tax paid on a cash basis (including withholding taxes paid by other undertakings with respect to payments to undertakings and branches within a group) during the financial year to which the report relates by undertakings and branches in each tax jurisdiction in which income tax is accrued;
 - (k) the sum of the profits from past financial years and the financial year to which the report relates, the distribution of which has not yet been decided upon, of –
 - (i) in the case of a branch, the undertaking that established, opened, registered or incorporated the branch in the State, or
 - (ii) in the case of any undertaking other than a branch, the undertaking;
 - (l) whether the report is prepared under this paragraph or paragraph (3).
- (3) An undertaking may elect to report the information referred to in paragraph (2) on the basis of the reporting instructions referred to in Section III, Parts B and C, of Annex III to Council Directive 2011/16/EU⁸.
- (4) A report shall be presented –
- (a) in such electronic machine-readable format template as may be laid down by the European Commission in accordance with Article 48c(4) of the Directive, and
 - (b) in accordance with any common template laid down by the European Commission in accordance with Article 48c(4) of the Directive.
- (5) The information referred to in paragraph (2) (whether it is reported under paragraph (2) or (3)) shall be presented separately in respect of –
- (a) each Member State (and for this purpose different tax jurisdictions within a Member State shall be taken together and the information shall be presented in respect of the Member State), and

⁸ O.J. No. L 64, 11.3.2011, p. 1

- (b) each tax jurisdiction which –
 - (i) on the 1st day of March of the financial year in respect of which the report is drawn up, is listed in Annex I of the version of the council list that was, on that date, most recently published in the Official Journal of the European Union, or
 - (ii) is mentioned in Annex II of the version of the council list that was most recently published in the Official Journal of the European Union on both of the following dates:
 - (I) the 1st day of March of the financial year in respect of which the report is drawn up;
 - (II) the 1st day of March of the financial year preceding that financial year.

(6) The report shall present the information referred to in paragraph (2) on an aggregated basis for tax jurisdictions not referred to in paragraph (5).

(7) For the purpose of paragraphs (5) and (6), and subject to paragraphs (8) and (9), the report shall attribute the information referred to in paragraph (2) to a tax jurisdiction where, due to –

- (a) the establishment of an undertaking in that jurisdiction,
- (b) the existence of a fixed place of business of an undertaking in the jurisdiction, or
- (c) a permanent business activity of an undertaking in the jurisdiction,

the activities of the undertaking, or any of its affiliated undertakings, can be subject to income tax in that tax jurisdiction.

(8) Where the activities of more than one affiliated undertaking can be subject to income tax in a single tax jurisdiction, the information attributed to that tax jurisdiction in the report shall represent the sum of the information relating to such activities of each affiliated undertaking and their branches in that tax jurisdiction.

(9) The report shall not attribute information on any particular activity to more than one tax jurisdiction.

Exclusion of certain matters from report

14. (1) Subject to paragraph (3), where, in the opinion of an undertaking, the inclusion of one or more specific items of information referred to in Regulation 13(2) in a report on income tax information would seriously prejudice the undertaking's competitive position, those specific items may be omitted from a report on income tax information.

(2) Where information is omitted from a report on income tax information in accordance with paragraph (1) –

- (a) the report from which it is omitted shall state that such information has been omitted,

- (b) the report from which it is omitted shall provide a reasoned explanation of why disclosure of the information would seriously prejudice the undertaking's competitive position, and
- (c) that information shall be included –
 - (i) in a report on income tax information published by, or in relation to, the undertaking in accordance with these Regulations no later than 5 years from the date of the report from which the omission was made, or
 - (ii) where the undertaking is not required to publish a report on income tax information within 5 years of the date of the report from which the omission was made, in the first report on income tax information published by, or in relation to, the undertaking in accordance with these Regulations after the publication of the report from which the omission was made.

(3) An undertaking shall not omit, from a report on income tax information, information pertaining to a tax jurisdiction included in Annex I or Annex II of the version of the council list that was most recently published in the Official Journal of the European Union on the date on which the report on income tax information is published.

Currency to be used in report on income tax information

15. (1) Subject to paragraph (2), the currency used in the report on income tax information shall be –

- (a) where the report relates to a standalone undertaking, the currency in which the annual financial statements of the standalone undertaking are presented, or
- (b) in any other case, the currency in which the consolidated financial statements of the ultimate parent undertaking are presented.

(2) Where an undertaking publishes a report on income tax information in accordance with Regulation 6(4) or 8(4), the currency used in the report shall be the currency in which the undertaking publishes its annual financial statements.

PART 4

Publication and Accessibility of Report on Income Tax Information

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

16. (1) In this Regulation, “relevant person”, in relation to an undertaking, means -

- (a) where the undertaking has at least one director, a director of the undertaking,
- (b) where the undertaking is a general partnership, a partner in the undertaking,
- (c) where the undertaking is a limited partnership, a general partner in the undertaking, and
- (d) where the undertaking does not come within any of subparagraphs (a) to (c), a member of the administrative, management and supervisory body of the undertaking.

(2) The relevant persons in an ultimate parent undertaking or a standalone undertaking referred to in Regulation 3 have collective responsibility for ensuring that the report on income tax information is drawn up, published and made accessible in accordance with these Regulations.

(3) The relevant persons in a second undertaking have collective responsibility for ensuring, to the best of their knowledge and ability, that the report on income tax information is drawn up, published and made accessible in accordance with these Regulations.

(4) In relation to a branch referred to in Regulation 8, the persons authorised by an external company (within the meaning of Part 21 of the Act of 2014) to ensure compliance with Part 21 of that Act have collective responsibility for ensuring, to the best of their knowledge and ability, that the report on income tax information is drawn up, published and made accessible in accordance with these Regulations.

Statement by statutory auditor

17. Where a report on the annual financial statements of an undertaking is prepared by statutory auditors in accordance with the Act of 2014, the statutory auditors' report shall include a statement –

- (a) on whether the undertaking was required to publish a report on income tax information under these Regulations for the financial year preceding the financial year to which the report of the statutory auditors relates, and
- (b) where the statutory auditors state, under subparagraph (a), that the undertaking was required to publish such a report, whether or not the undertaking published a report on income tax information in accordance with these Regulations.

PART 5
Miscellaneous

Offences and penalties

18. (1) A person who fails to comply with Regulation 3(2), 6(2), 6(3), 6(4), 8(2), 8(3), 8(4), 11(1), 11(2), 12(2), 12(4)(b), 13, 14(2), 14(3) or 15 shall

be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.

(2) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of –

- (a) any person, being a director, manager, secretary or other officer of the body corporate,
- (b) a relevant person (within the meaning of Regulation 16), or
- (c) a person who was purporting to act in a capacity referred to in subparagraphs (a) or (b),

that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if the person were guilty of the first-mentioned offence.

Powers of the Corporate Enforcement Authority

19. (1) For the purposes of these Regulations, the Corporate Enforcement Authority may –

- (a) investigate instances of suspected offences under these Regulations,
- (b) enforce these Regulations, including by the prosecution of offences by way of summary proceedings, and
- (c) do all such acts or things as are necessary or expedient for the performance of its functions under these Regulations.

Amendment of Act of 2014

20. Section 944D of the Act of 2014 is amended by the insertion of the following subsection after subsection (5):

“(6) In this section, a reference to the exercise of the functions of the Authority under this Act shall include a reference to the exercise of the functions of the Authority under the European Union (Disclosure of Income Tax Information by Certain Undertakings and Branches) Regulations 2023.”.

GIVEN under my Official Seal,
21 June, 2023.

SIMON COVENEY,
Minister for Enterprise, Trade and Employment.

L.S.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations require European Union (EU) based ultimate parent undertakings or standalone undertakings to publish a report on income tax information once their net turnover is above €750 million, for each of the last two consecutive financial years. EU based medium and large subsidiaries of a non-EU ultimate parent undertaking are required to publish a report on income tax information of the parent undertaking.

EU based subsidiaries or branches will not be required to publish a report where a non-EU based ultimate parent or standalone undertaking publishes a report of income tax information to their company website within 12 months of the balance sheet of the financial year for which the report is drawn up. Where the information is not available, the subsidiary or branch shall request the information from the ultimate parent or standalone undertaking. If the information is not provided, the subsidiary or branch must publish a report of all the income tax information in its possession and a statement that the ultimate parent or standalone undertaking did not make the necessary information available. The reporting obligations do not apply to a branch where the net turnover has not exceeded €12 million for the last two consecutive financial years.

The content of the report on income tax information must include a list of all the subsidiary undertakings with a brief description of the nature of their activities, the number of employees, the revenues which are the sum of the net turnover along with income from other investments and interests. Undertakings are exempt from the reporting requirement where the disclosure of certain information would be seriously prejudicial to the commercial position of the undertakings. The information omitted must be made public in a later report on income tax information five years from the date of its original omission. The information pertaining to non-cooperative tax jurisdictions may never be omitted.

The report on income tax information must be published within 12 months after the balance sheet date of the financial year for which the report is published on the website of the undertaking. Undertakings are exempt from applying the rules where the report is made accessible to the public on the website of the companies register free of charge. The website of the relevant undertaking must contain information on the exemption and the reference to the website of the relevant undertakings register.

Where the financial statements of an undertaking are required to be audited, the audit report must state whether the undertaking was required to draw up a report of tax information for the year preceding the financial year for which the audit report was prepared and if so, if the report was published.

Directors or members of the administrative, management and supervisory body of an undertaking have collective responsibility for ensuring that the report on income tax information is drawn up, published, and made accessible to the public. This includes authorised persons in branches and general partners of partnerships. A person who fails to comply with these Regulations shall be guilty of a category 3 offence.

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