Freshfields Bruckhaus Deringer

Belgium implements public country-by-country tax reporting

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*Applicable to financial years starting on or after 22 June 2024, large multinational companies and standalone companies with activities in the EU will be required to provide greater tax transparency by preparing, filing and publicly disclosing a country-by-country report (**CbCR**) containing certain tax and financial information. As opposed to the non-public CbCR developed under Point 13 of the Action Plan to address base erosion and profit shifting (**BEPS 13**), which is to be disclosed to tax administrations only, public CbCR leads to disclosure to the public at large.*

*In Belgium, public CbCR was introduced by the Law of 8 January 2024 amending the Belgian Code of Companies and Associations (**CCA**) and further executed by the Royal Decree of 18 April 2024. It forms an implementation of the European CbCR Directive.*

Please refer to our **detailed briefing** on this topic. The key features of public CbCR as implemented by Belgium can be summarised as follows:

Scope of CbCR

The new public CbCR regime applies to multinational groups or standalone companies exceeding a threshold of EUR750m (consolidated) turnover in each of the last two financial years.

CbCR is being introduced throughout the EU and also applies in several third countries. The rules seek to avoid multiple reporting by providing that only the following Belgian companies have a reporting obligation (always provided that the size threshold is met):

- Belgian ultimate parent companies;
- Belgian subsidiaries of non-EU groups, unless their EU holding company fulfils the EU CbCR obligation or their non-EU ultimate parent entity fulfils an equivalent non-EU CbCR obligation. “Small companies” are however exempt;
- Belgian branches opened by a non-EU company with a non-EU ultimate parent entity, unless their group has a Belgian subsidiary which fulfils the CbCR obligation or their non-EU ultimate parent entity fulfils an equivalent non-EU CbCR obligation. Small branches (annual turnover < EUR9m) are however exempt; and
- Belgian standalone companies if they have a taxable presence outside Belgium.

Importantly, the implementing Belgian royal decree of 18 April 2024 contains a reference to the rules on non-public CbCR in the Belgian Income Tax Code, which we interpret as an attempt to further streamline the reporting obligations under public and non-public CbCR. As explained in further detail in our briefing, this seems to imply that a Belgian entity may be exempt from its public CbCR obligation if that obligation is fulfilled by another group entity that also fulfils the “non-public” (BEPS 13) reporting. This would include the situation in which a so-called “surrogate parent entity” prepares and discloses a public CbC report, even if that concept is not provided in the CCA. This is a point on which clarification from the Belgian authorities would be highly welcomed.

Credit institutions and stockbroking firms are already subject to specific rules on public CbC reporting regarding income taxation. They are therefore exempt from this new public CbCR obligation provided that they comply with the specific rules.

Content of the CbC Report

In line with the European CbCR Directive, the public CbC report must include certain financial and tax information such as a short description of the activities, the revenue, profit or loss before income tax, amount of income tax accrued during the relevant financial year, accumulated earnings, etc.

Such tax and financial information must be reported on a "country-by-country" basis for (i) each EU member state and (ii) each non-cooperative jurisdiction or tax haven (as provided on relevant lists). The tax and financial information relating to other non-EU jurisdictions may be aggregated.

Importantly, unlike the Netherlands, Germany and France, Belgium has not made use of the option in the European CbCR Directive to allow companies to postpone (for up to five years) the disclosure of competitively sensitive information.

Further points to note

Public CbCR marks a significant step towards greater tax transparency. From now on, the general public, including shareholders, creditors, potential investors, journalists and non-governmental organisations, will gain better insights into the tax position of large companies. With this increased visibility, companies should prepare for potential questions or criticism from various stakeholders and should take this already into account when preparing the report. In order to anticipate questions or criticism, it is for instance recommended to identify and be able to explain any counter-intuitive, deviating or sensitive figures in the report.

On the other hand, some companies in the past already decided to spontaneously publish such tax and financial information for example in the context of ESG reporting. For them, public CbCR is not a big step in itself, but they will want to ensure that the different reports are and remain consistent.

Finally, public CbCR can play a role in takeover transactions. A public CbC report may indeed provide potential bidders with information to assess whether competition law notifications and/or foreign direct investments reviews are required in the event of an (unwanted) bid on a company, before or without the company specifically providing this information to the bidder.

*For more detail, please see our in-depth briefing **here**. If you have any questions about this topic, please get in touch with the authors or your usual Freshfields contact.*

Not only the published tax information may attract the interest of various stakeholders. Country-by-country turnover figures may for instance allow potential bidders to assess competition law or FDI requirements at an early stage of a potential transaction.