

Public CbCR- Relevance for Indian Headquartered Groups

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I. Introduction

The European commission acknowledged the need for fairness and transparency in matters of corporate taxation during communications released for commission work program published in 2015 and 2016. The European parliament further passed a resolution stressing the need for public CbCR in 2019.

The European parliament and the Council of European Union (EU) adopted Directive (EU) 2021/2101[1] which brought about the requirement for large MNE groups to publish a report, modeled after the Country-by-country report, which is freely available on their website.

As per the directive, the Public CbCR requirement must be implemented for financial year beginning on or after June 22nd, 2024. However, Romania has implemented the regulation from financial year starting on or after January 1st, 2023, and Croatia has implemented it from starting on or after January 1st, 2024.

Public CbCR statements are expected to be beneficial to multiple stakeholders. EU expects that it will help raise investor confidence, provide more information to the public and help raise public involvement on corporate tax policies.

In 2024, Australia followed suit and amended the Tax Administration Act 1953, to require a public CbCR report for large MNE groups with similar aims of providing corporate tax transparency and to provide more

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information to other public stakeholders.

Hence, applicable MNE Groups following a calendar year have to note that they must publish the CbCR on or before 31st December 2026, i.e, in 6 months from now. Further, Public CbCR requires careful planning as various EU jurisdictions have implemented different requirements. Australia also requires qualitative disclosure which was not required as per private CbCR filed with tax authorities. Therefore, Public CbCR is not a mere reproduction of the CbCR filed with tax authorities, and MNE Groups will have to factor in efforts w.r.t. preparation and making the public CbCR available while planning for their annual tax / transfer pricing compliances.

II. EU Regulations

A. Applicability criteria

Public CbCR is applicable for MNE groups with consolidated revenue greater than €750 million for two consecutive years, the tested year and the year prior to the tested year. EU headquartered companies are liable to publish CbCR if they meet the above criteria.

There is a misconception that public CbCR is only applicable for EU headquartered groups. However, Public CbCR is also applicable for non-EU MNE groups having operations in EU and non-EU MNE Groups will have to undertake an analysis as to whether the European constituent entities meet the said criteria for publishing Public CbCR within the due date.

For the EU subsidiaries of non-EU MNE groups that meet the consolidated revenue criteria, they are liable to publish the report if any of the European constituent entities meet two of the three thresholds provided below.

- A) Total balance sheet greater than €5 million
- B) Net revenue greater than €10 million
- C) An average of 50 employees during the year

However, where EU branches of Non-EU MNE Groups cross the revenue threshold itself (viz., Net revenue greater than € 10 million), Public CbCR requirements will be triggered.

Member states can set their own balance sheet and revenue threshold however balance sheet threshold cannot be higher than €7.5 Million, and the revenue threshold cannot cross €15 Million.

MNE Groups headquartered in EU and Non-EU MNE Groups have different applicability criteria and EU has prescribed stricter reporting requirements for EU headquartered MNE Groups and has also required

standalone EU companies with Permanent establishment in a member state to publish a CbCR.

B. Reporting Obligations

i) Information Required to be disclosed

The published report must disclose information on a country-by-country basis for all the following countries where the MNE group has legal presence:

- a) All EU member states
- b) Countries in the European Economic Area (EEA)[2]
- c) Jurisdiction listed as non-cooperative for tax purpose by EU.[3]

Information for all other jurisdictions not falling under the above categories can be presented in an aggregated manner.

EU also has further allowed member states to implement an adverse information clause which will allow for certain information to be omitted from the public CbCR where such disclosure would adversely impact the business. The reasons for omission should be disclosed in the report and reasonable justification for the same should be provided.

The information omitted in a Public CbCR must be disclosed by the subsidiary in a subsequent public CbCR and be published within the following 5 years. However, Country by country details of non-cooperating jurisdictions cannot be omitted.

EU has issued a template for the information to be disclosed for the use of EU based MNE groups. Non-EU groups can follow a different format as long as the prescribed information is published.

Public CbCR requires the disclosure of all the information in Part A of CbCR except breakdown of related party revenue, unrelated party revenue and stated capital. The report also has to disclose the names of the entities and a brief description of their activities. A disclosure on whether the report was prepared according to EU's CbCR regulations is also required.

ii) Due date

The public CbCR should be published and freely available within one year from the end of the financial year for the Ultimate parent entity, which is the due date for filing the CbCR with applicable tax authority.

iii) Publication

The Public CbCR should be freely available on the website of the subsidiary or the branches for a period of 5 years. EU has allowed for three exemptions from publication of information on the website of the subsidiary in the following instances:

- a) Branches do not have to publish public CbCR in a member state if there exists a subsidiary, which is liable to publish the public CbCR in the member state.
- b) Some countries have encoded a clause where the public CbCR is not required to be published in case the company files a machine readable public CbCR with the company registrar of the respective country, and shares the link to the same on their website.
- c) For Non-EU MNE Groups the exemption is provided where:
 - a) A machine readable public CbCR is freely published on the UPE's website in at least one of the official languages of EU within 12 months from the end of the financial year; **and**
 - b) The report identifies the name and the registered office of a single subsidiary, or the name and the address of a single branch with the company registrar where the report has been published.

C. Summary of regulations in major EU member states

Jurisdiction	First Applicable FY	Registry exemption	Omission of Adverse information	MSME Thresholds	Penalties
Germany	2025-26	Yes	Yes	Revenue of EUR 15 Million Revenue Balance sheet total of EUR 7.5 Million Or 50 Employees Branch Revenue threshold at €12 Million	Up to 250,000 Euros
France	2025-26	Yes	Yes	Revenue of EUR 15 Million Revenue Balance sheet total of EUR 7.5 Million Or 50 Employees Branch Revenue threshold at €12 Million	Court can set penalties
Italy	2025-26	No	No	None, all companies included	Administrative penalties between EUR 10,000 and EUR 50,000 are imposed on the directors if the report is not filed.
Ireland	2025-26	Yes	Yes	Revenue of EUR 15 Million Revenue Balance sheet total of EUR 7.5 Million	5000 or imprisonment for person responsible for

Jurisdiction	First Applicable FY	Registry exemption	Omission of Adverse information	MSME Thresholds	Penalties
				Or 50 Employees Branch Revenue threshold at €12 Million	complying or both
Netherlands	2025-26	Yes	Yes	EUR 15 Million Revenue EUR 7.5 Million Balance sheet 50 Employees	Failure to comply is an economic offence and may result in a fine of up to €27,500, detention for up to six months, or community service.

III. Australian Regulations

A. Applicability Criteria

Australia has implemented a public CbCR requirement for qualifying MNE groups from the reporting period starting on or after 1st July 2024. The report is to be published within 12 months of the end of the reporting period.

Similar to the EU public CbCR regulations, MNE Groups which are not headquartered in Australia are also liable to submit public CbCR to Australian Tax office (ATO) if all of the below criteria applies for group:

- a) CbCR reporting is applicable for the group for the reporting year (year under consideration) and the preceding year
- b) Annual consolidated revenue is greater than AUD 1 Billion.
- c) A member of the group is resident in Australia
- d) AUD 10 million or more of consolidated turnover for the reporting period was Australia Sourced

‘Australian Sourced’ income refers to both the ordinary income earned by Australian Resident entities and any ordinary income earned from Australia by a non-resident entity.

Australian Sourced is broader than just revenue from Australian subsidiaries and may include income earned from Australia by non-Australian subsidiaries, and it is possible for a group to be liable to publish public CbCR in Australia even if the Australian subsidiaries do not have significant activities.

B. Registration

The Parent entity should register with the Australian Tax office (ATO) four weeks before filing the Public CbCR with ATO.

C. Information required

Information should be reported on a Country-by-country basis for Australia and Specified jurisdictions[4] (as per Public CbCR regulations) and can be aggregated for all other jurisdictions. Australian Public CbCR requires the disclosure of all the information in Part A of CbCR.

The group also has to provide the following qualitative information in the CbCR

- a) a brief description of the group's approach to tax.
- b) a description of the reconciliation between the income tax accrued as per the CbCR and the income tax accruable as per the headline corporate tax rate of the jurisdiction.

The report also has to disclose the names of the entities and a brief description of their activities.

D. Publication

The required information has to be submitted to ATO through an XML schema released by the ATO, and ATO will make the information available to the public through a website.

IV. Key considerations for Indian MNE Groups

A. TP Assessment

As per the Indian regulations, the TPO (Transfer pricing Officer) has very limited access to the CbCR. TPO can only request access to the CbCR information of the jurisdiction of the company involved in related party transactions being assessed by the TPO. However, public CbCR is freely available documentation published by the company and can be used by the TPO without any regulatory hurdles. The information provided in the CbCR is a holistic view of the value chain of the group and where the value is generated and where the profit is retained. Hence, it is imperative that the local file and Master file should align with the data being provided in the public CbCR.

All the major players in the industries will likely have to publish Public CbCR. This may allow TPO to understand an indicative range profitability in those industries and give a picture of industry trends, which can provide direction to the TPO during the assessment proceedings for loss making companies. However, as the EU public CbCR does not require the breakup of related and unrelated revenue, the figures may contain

significant controlled transactions, which cannot be used for comparison analysis from a transfer pricing perspective.

B. Pillar Two risk assessment

Tax authorities might leverage information in public CbCR for risk assessment in light of Pillar Two compliances, especially where MNE Groups have opted for TCSH (Transactional CbCR Safe Harbour)

C. Italy

For Indian companies with subsidiaries in Italy. Italy has not implemented the MSME thresholds, so any subsidiaries in Italy will have to publish the public CbCR. Further, Italy does not allow for omitting adverse information.

D. Australia

Country by Country details are required of jurisdiction listed in the regulations. This includes major jurisdictions like Singapore, Switzerland and Hong Kong and tax havens. Information about operations in these countries will have to be disclosed. The group may have to disclose tax incentives and tax positions taken in the specified jurisdictions in the reconciliation of Tax Accruable as per headline corporate tax rate and actual tax accrued in the jurisdiction.

E. Public Scrutiny

Public CbCR will make accessible to public significant information about the operations of the MNE Group and it is possible that publication of this information may bring about increased reputational risk for groups. This risk is more pronounced for entities reporting in Australia as qualitative information regarding tax policy has to be disclosed in Australia.

V. Conclusion

Indian MNE groups should understand the compliance requirements by verifying if any of its subsidiaries in European Union meet the requirement in their respective jurisdiction.

With regard to Australia, the group must ensure that all the Australian sourced income is recognized and recorded accurately in the accounting system to ensure that group can reliably determine if it has crossed the AUD 10 million threshold.

Most importantly, MNE Groups need to ensure that revenue recognized, and profits recorded in the respective jurisdictions are aligned with the economic activities in the respective jurisdictions. Listed companies also

need to study the impact on shareholder value from these regulatory changes. Further, the transfer pricing outcomes are accurately documented within three-tier documentation viz., Local file, Master file and CbCR.

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[1] Directive (EU) 2021/2101, 2021 O.J. (L 429)

[2] Iceland, Liechtenstein, and Norway

[3] Major countries include Russia, Vietnam, Morocco and Turkey, full list can be found on : <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>

[4] Major Jurisdictions include Singapore, Hong Kong, Switzerland, Hong Kong. Full list can be found on : <https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/large-business/public-country-by-country-reporting/information-disclosed-based-on-jurisdiction>

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