

# Public Country-by-Country Reporting (pCbCR): New transparency regulations for companies

Almost every company today has foreign relationships. While the free movement of capital gives companies more and more opportunities to structure their taxes, the collection of taxes poses a major challenge for countries. The disclosure of income tax information through pCbCR is intended to counteract this tax avoidance and create more transparency.



## Overview

Public CbCR (pCbCR) was introduced by Directive (EU) 2021/2101. The law transposing the Directive into national law introduces pCbCR in Sections 342-342p HGB and extends the disclosure obligations for multinational companies in the area of income taxes.

The income tax information report, known as "**Public Country-by-Country Reporting (pCbCR)**", takes centre stage. It serves as an

important source of information for various company stakeholders.

The obligation to prepare and publish a pCbCR applies in Germany for financial years beginning after 21 June 2024.

## Which companies are affected?

The new reporting obligations primarily apply to companies that are already obliged to prepare a CbCR in accordance with Section 138a AO and whose (consolidated) revenue in **two** consecutive financial years was **at least 750 million euros**.

This affects both domestic group parent companies and non-affiliated companies with activities abroad as well as medium-sized and large subsidiaries of parent companies based outside the EU.

Domestic branches or subsidiaries of **non-EU companies** are required to report if their turnover in **two** consecutive years exceeds the threshold of **12 million euros**.

The reporting obligation arises if the turnover threshold is exceeded in the second financial year and expires if it falls below the threshold in two consecutive years.

In this respect, the obligation differs from CbCR for tax purposes, which is only based on the previous financial year, meaning that the reporting obligation expires if turnover falls below the threshold in just one year.

Credit institutions are exempt from the new regulations if all required information has already been published elsewhere.

### What information must be published?

The pCbCR largely corresponds to the familiar information from the tax CbCR, but has differences in detail, e.g. with regard to income taxes for the reporting period. Companies can generally use the information from the CbCR for tax purposes.

In detail, the report must contain the following points:

- Name of the company
- Description of the type of activities
- Number of employees
- Net sales revenue
- Profit or loss before tax
- Income taxes based on the profit generated in the respective country in the current year
- Income taxes paid in the respective country in the current year
- Amount of undistributed profits.

If necessary, companies can temporarily withhold certain negative information that could affect their market position. However, this must be disclosed no later than four years later.



### How and when must the reporting be published?

Disclosure in accordance with the legal requirements takes place in two ways: Firstly, it is submitted to the Federal Gazette for publication in accordance with Section 342m HGB. Secondly, disclosure is also made on the company's website in German in accordance with Section 342n HGB.

This disclosure includes all EU countries as well as the countries on the EU blacklist in a cumulative presentation by tax jurisdiction. For third countries, the disclosure is made in aggregated form as "Rest of the World".

The date of disclosure is no later than twelve months after the balance sheet date of the relevant financial year, although this period may be extended under certain circumstances. In addition, the disclosed information must be available for at least five years in order to fulfil the legal requirements.

### What happens in the event of infringements?

Infringements of the public reporting obligation can be penalised by the Federal Office of Justice with administrative fines or penalties of up to **250,000 euros**, e.g. in the event of incorrect information in the report. However, it is unclear what exactly is considered incorrect and whether the fine is to be imposed per infringement or per report.

In certain cases, members of the body authorised to represent the company, such as managing directors or board members, can also be prosecuted.

### Recommended action

Companies that potentially fall under the reporting obligation of pCbCR and are already subject to tax CbCR should review their existing processes to determine whether the quality of the CbCR data and the associated processes is sufficient for this new obligation or whether there is a need for adjustments. Companies that are subject to the CbCR reporting obligation for the first time should make appropriate arrangements without delay in order to fulfil the legal obligations of CbCR and pCbCR and avoid the penalties.

It is recommended that multinational companies or groups include strategic considerations in their decision-making, e.g. the extent to which it makes sense to supplement certain data with (voluntary) additional information in order to avoid misunderstandings in the public domain.

The possibility of deferring the publication of "sensitive data", such as business secrets or strategic plans, the disclosure of which could jeopardise the competitiveness or security of the company, for up to four years should also be examined. Careful scrutiny is required to ensure that this is justified. It is important to balance the interests of the company and its stakeholders and, where appropriate, to consult with the relevant authorities to minimise potential risks and comply with legal requirements.

## Do you have any questions on this topic?

Do you need support? Simply contact our experts Henning Straeter and Hilda Forat. They will be happy to explain our range of services to you.

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