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# ***European Directive that requires the publication of the country-by-country information transposed into Spanish law***

**January 2023**

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## ***Summary***

The European Directive that will oblige those multinational groups and entities whose revenues exceed 750 million euros to make public relevant tax and financial information aggregated on a country-by-country basis on their website has been transposed into Spanish law.

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On 22 December, the Law 28/2022, which introduces the obligation for certain companies and branches established in Spanish territory to publish relevant information relating to corporate income tax (country-by-country report), was published in the Spanish Official State Gazette.

By means of this law, the Spanish legislator transposes into domestic legislation the content of the EU Directive 2021/2101 of November 24<sup>th</sup>, 2021, which amends the EU Directive 2013/34 with regard to the disclosure of information relating to corporate income tax by certain companies and branches, and which represents a substantial increase in reporting obligations for large multinational groups.

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**To whom does it apply?** The new obligation will apply to parent companies of multinational groups established in Spain (ultimate parent companies), as well as to Spanish subsidiaries and branches of multinational groups whose ultimate parent company is established outside of the European Union and whose turnover exceeds **750 million Euros during the last two consecutive tax periods**. The obligation is extended to those entities which, in accordance with the applicable regulations, do not constitute a group.

The following taxpayers will be **exempt from this new obligation**:

- Groups and entities that are established exclusively in a Member State of the European Union.
- Subsidiaries and branches whose ultimate parent company is established outside of the European Union, in those cases in which a country-by-country report whose content and accessibility are similar to those established by Spanish regulations has been published. In those cases, in which subsidiaries and branches cannot access the complete country-by-country information of their multinational group, they must also publish the information available to them, indicating that their ultimate parent company has not made the complete information available.
- Credit institutions that meet with the provisions of art. 87 of Law 10/2014, of June 26th, related to the regulation, supervision and solvency of credit institutions.

**What will the content of this obligation be?** This new obligation, similar in content to the Country-by-Country Report currently in force as a result of the BEPS Plan, requires that relevant information **on the composition and activities of the multinational group, the number of employees, revenues and profits earned, taxes accrued and paid and reserves** in the financial year relating to the most recent of those two financial years must be disclosed on the Group's website and in the annual accounts.

The information shall be disclosed **separately for EU Member States, and for jurisdictions classified as non-cooperative** by the EU, and **on an aggregate basis for other jurisdictions**. In particular, multinational groups shall disclose the information of the jurisdictions listed in the so-called “black list”, amongst which Panama or Trinidad and Tobago are included, and the jurisdictions listed more than two years in the “grey list”, which, at present time, includes relevant countries, such as Costa Rica, Thailand, Malaysia, Hong-Kong, Uruguay or Turkey.



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**When will it enter into force and when will this information have to be reported?** The obligation to make public country-by-country information will apply for **fiscal years starting on or after June 22<sup>nd</sup>, 2024**, in line with the deadline foreseen in the EU Directive. The information **must be published within six months from the fiscal year end** which information is published. Similarly, the country-by-country information shall be register in the Commercial Register together with the financial annual accounts. Country-by-country information **must be available for at least 5 consecutive years**.

**How will the information be presented?** The information shall be prepared in any of the official languages of the European Union and submitted using a **common template and automatic-readable electronic formats**, to be established by the European Commission.

**How will it be published?** The Public Country-by-Country Report shall **be published on the corporate website** of the multinational groups, entities and branches falling within the scope of the standard.

**Who is responsible for ensuring compliance with this obligation?** The regulations contain an express mention that the **members of the management bodies** of the ultimate parent company or of the obliged subsidiary, and the staff responsible for complying with the disclosure of formalities in relation to the branches, are collectively responsible for ensuring that country-by-country information is made public under the terms provided.

**What about confidentiality of data?** in cases in which its **disclosure is deemed seriously prejudicial to the commercial position of the companies** covered by the report, Member States may allow one or more items of information to be temporarily omitted from the report.

Any omission shall be clearly stated in the report and shall be accompanied by a duly substantiated justification.

The omitted information must be disclosed in a subsequent report within five years after its initial omission.

Information relating to jurisdictions classified as non-cooperative shall never be omitted.

### **The new obligation in the international framework**

This initiative to make certain tax and financial information accessible and transparent on a country-by-country basis has existed since 2016, with the entry into force and publication of Form 231. Although not public, the information in the Country-by-Country Report is automatically shared



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between most of the jurisdictions involved through several agreements for the automatic exchange of such information.

In addition, the Spanish tax agency publishes an annual [country-by-country information exploitation report](#) which contains aggregated and anonymous information on the Country-by-Country reports filed by the parent companies of Spanish groups.

On the other hand, Spanish companies were already required by Law 11/2018, that regulates the Statement of Non-Financial Information, to disclose relevant information on a country-by-country basis, although in a considerably less extent of detail.

Finally, there are other standards in place, such as the Global Reporting Initiative ("GRI"), by means of which multinational groups and companies may opt for disclosing relevant information on a country-by-country basis.

Below is a comparative table with the information to be included in (1) the Country-by-Country Report in accordance with article 14 of the Corporate Income Tax Regulation; (2) the Statement of Non-Financial Information; (3) the public Country-by-Country Report in accordance with the new Law 28/2022; and (4) the GRI207/4 standards:

	1	2	3	4
	Country - by - country report (Art. 14 RIS)	Non-financial information statement	Public Country - by - country report	GRI 207-4
<b>MANDATORY</b>	✓	✓	✓	X
<b>PUBLIC INFORMATION</b>	X	✓	✓	✓
<b>CONTENTS</b>				
Gross income	✓	✓	✓	✓
Income with related parties	✓	X	X	X
Income with third parties	✓	X	X	X
Profit before tax	✓	✓	✓	✓
Corporate income tax paid	✓	✓	✓	✓
Corporate income tax accrued	✓	X	✓	✓
Capital	✓	X	X	X
Reserves (profit from previous years and accumulated earnings)	✓	X	✓	X
Number of employees	✓	X	✓	✓
Tangible assets	✓	X	X	✓

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	1	2	3	4
	Country - by -country report (Art. 14 RIS)	Non-financial information statement	Public Country – by - country report	GRI 207-4
Explanation of the difference between the effective rate and nominal rate	X	X	✓	✓
Subsidies	X	✓	X	X

## Conclusion

The new obligation described may have a major impact on multinationals with presence in Spain.

For that reason, it is important to analyze and anticipate the potential implications that could arise from the analysis of the information reported, both from tax authorities and from investors, creditors or the general public, who, will now have access to information that was previously only available for tax authorities.

Finally, it is relevant to bear in mind that Romania has taken a step ahead in the transposition of the European Directive, requiring the publication of the country-by-country information of fiscal years starting as of January 1<sup>st</sup>, 2023. Therefore, multinational groups with presence in that jurisdiction must have in mind that they might have to comply with this obligation even before it is required by Spanish law.

## ¿Shall we talk?

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