

Section 138a – Country-by-country reports by multinational enterprise groups¹

(1) After the end of a financial year, an enterprise with registered office or place of management in Germany (domestic enterprise) that prepares consolidated financial statements or that must prepare them pursuant to rules other than tax laws (domestic group parent) shall compile a group country-by-country report for that financial year and submit it to the Federal Central Tax Office if

1. the consolidated financial statements cover at least one enterprise with registered office and place of management in another country (foreign enterprise) or at least one foreign permanent establishment and

2. the previous financial year's consolidated revenue, as reported in the consolidated financial statements, totals at least 750 million euros.

Subject to subsections (3) and (4) below, the obligation under the first sentence above shall not apply if the domestic enterprise as defined in the first sentence above is included in the consolidated financial statements of another enterprise.

(2) The country-by-country report as defined in subsection (1) above shall contain:

1. an overview, broken down according to tax jurisdiction, of how the group's business activities are distributed throughout the tax jurisdictions in which its enterprises or permanent establishments are engaged in business activity; to this end, the overview shall state the following information, based on its consolidated financial statements:

a) revenue and other income from business transactions with related parties,

b) revenue and other income from business transactions with unrelated parties,

c) total revenue and other income pursuant to letters a) and b) above,

d) income taxes paid during the financial year,

e) income taxes paid and accrued during the financial year for that financial year

f) profit (loss) before income taxes

g) stated capital,

h) accumulated earnings,

i) number of employees and

j) tangible assets

¹ This translation is provided merely for information purposes. Only the German language version is authoritative for the application of the law.

2. a list of all enterprises and permanent establishments, broken down according to tax jurisdiction, which are covered by the information reported under number 1 above, together with the most important business activities they perform

3. any additional information that the domestic group parent considers necessary to understand the overview under number 1 above and the list under number 2 above.

(3) If the consolidated financial statements of a foreign enterprise, which under the provisions of subsection (1) above would be required to submit a country-by-country report if its registered office or place of management were located in Germany (foreign group parent), cover a domestic enterprise (constituent domestic entity), and if the foreign group parent tasks the constituent domestic entity with submitting a country-by-country report for the group (reporting entity), then the reporting entity shall submit the country-by-country report to the Federal Central Tax Office.

(4) A covered domestic group company shall be required to submit to the Federal Central Tax Office the country-by-country report for a group with a foreign group parent, which under the provisions of subsection (1) above would be required to submit a country-by-country report if its registered office or place of management were located in Germany, if the Federal Central Tax Office has not received a country-by-country report. If a constituent domestic entity submits the country-by-country report, all of the other constituent domestic entities shall be relieved of this requirement. If a constituent domestic entity is unable to submit the country-by-country report by the deadline stipulated in the first sentence of subsection (6) below, in particular because it cannot procure or produce the report, then it shall notify the Federal Central Tax Office accordingly by the deadline stipulated in the first sentence of subsection (6) below while at the same time providing all of the information listed in subsection (2) above that it has at its disposal or that it can procure. If a constituent domestic entity had reason to presume that the country-by-country report would be submitted on time and it subsequently turns out that, through no fault of the constituent domestic entity, this did not occur, then the constituent domestic entity shall fulfil its obligations under the first or third sentences above within one month after the non-submission became known. The first through fourth sentences above shall apply accordingly to a domestic permanent establishment of a foreign enterprise where such foreign enterprise is included in consolidated financial statements as a foreign group parent or as a constituent foreign entity.

(5) In its tax returns, a domestic enterprise shall state whether it is

1. a domestic group parent as defined in subsection (1) above,

2. a reporting entity, or

3. a constituent domestic entity in a group with a foreign group parent.

In cases where number 3 of the first sentence above applies, the domestic enterprise shall state which enterprise is submitting the country-by-country report and to which revenue authority the report is being submitted. If this information is not provided, the constituent domestic entity itself shall be required to submit the country-by-country report by the stipulated deadline. The first through third sentences above shall apply accordingly to a domestic permanent establishment of a foreign enterprise where

such foreign enterprise is included in consolidated financial statements as a foreign group parent or as a constituent foreign entity.

(6) The country-by-country report shall be submitted to the Federal Central Tax Office no later than one year after the end of the financial year for which the country-by-country report is to be produced. In derogation of the first sentence above, cases to which the fourth sentence of subsection (4) above applies shall be subject to the deadline stipulated therein. The report shall be submitted using an officially prescribed data set via remote data transmission.

(7) The Federal Central Tax Office shall forward all of the country-by-country reports it has received to the respective competent revenue authorities. If a country-by-country report contains information, as defined in subsection (2) above, for a contracting state to international agreements, the Federal Central Tax Office shall forward the submitted country-by-country report to the competent authority of the respective contracting state, on the basis of such international agreements. The Federal Central Tax Office shall receive the country-by-country reports that are forwarded to it by the competent authorities of the contracting states referred to in the second sentence above, and shall forward such reports to the respective competent revenue authorities. The Federal Central Tax Office may review country-by-country reports as part of its legally assigned responsibilities. The Federal Central Tax Office shall store the country-by-country reports electronically and shall delete them upon the expiration of the 15th year following the year of submission.