Euro Tax Flash from KPMG's EU Tax Centre

EU Commission proposes public Country-by-Country Reporting

Corporate Tax Transparency – Tax Avoidance – Country-by-Country Reporting – Public Disclosure

A draft proposal from the European Commission (EC) on public country-by country reporting has recently come into general circulation. The proposal would require multinational groups with a total consolidated revenue of EUR 750 million to report either if they are EU parented or otherwise have EU subsidiaries or branches.

Background

This proposal has emerged just a few days after political agreement was reached at EU level on country-by country reporting to tax authorities within the EU. The EC had already indicated in its Anti-Tax Avoidance Package issued on January 28, 2016 (See ETF 273) that it was analyzing how certain tax information could be made public by multinational firms on a country by country basis. It appears that the Impact Assessment that was to accompany this process has been completed and has come out in favour of public reporting. Apparently in anticipation of this, the EC had already announced that it would issue a legislative proposal in the spring of this year. It appears that the proposal is intended to respond to the recommendations for public country-by-country reporting made by the European Parliament in 2015. The proposal states that it takes account of responses to the EC's 2015 public consultation to which KPMG member firms in the EMA region also contributed (see ETF 259). The initiative has three stated aims: 1) to align tax with economic activity, 2) to foster corporate responsibility and 3) to promote fairer tax competition in the EU.

Details of the proposal

The report would require the following information on all members of the group (i.e. including non-EU members): activities, number of employees, net turnover (including related party turnover), profit or loss before tax, tax accrued and paid. The EU proposal for country-by-country reporting to tax authorities covers broadly similar information but is more extensive. The information must be broken down for each EU Member State where the group is active but may be aggregated for non-EU jurisdictions. Reports are to be published in a business register but also on companies' websites, and should remain accessible for at least five years. Only groups with a consolidated net turnover in excess of EUR 750 million will be affected. Where the ultimate parent is located outside the EU, the reporting will generally have to be done by the EU subsidiaries or branches, unless the ultimate parent publishes a report including those subsidiaries and branches. There is a carve out in this respect for 'small' subsidiaries and branches as well as a general carve out for financial sector groups that report under the CRD IV rules. Reports will have to be audited and responsibility will lie with the management of the ultimate parent (if in the EU) or, in other cases, with the management of the EU subsidiaries or branches concerned.

Next steps

The currently circulating draft does not indicate when or for what periods the new reporting requirements would have to be applied, and it will in part depend on how swiftly the legislative debate proceeds. Indeed, before the proposal can be adopted it will have to be approved both by Member State finance ministers in the ECOFIN Council as well as by the European Parliament. Given the latter's recommendations made in 2015 to introduce similar rules it seems unlikely that such approval would not be obtained. While tax related legislation normally requires unanimous approval at ECOFIN level, in the case of the current proposal, which would be to amend the 'Accounting' Directive (2013/34/EU), only a qualified majority would be required (i.e.16 Member States representing at least 65% of the EU population).

EU Tax Centre comment

The above comments are based on the currently circulating draft, which may of course not represent the final text of the proposal. While it is widely acknowledged that there is scope for companies to be more transparent about their tax affairs it may be questioned whether this proposal would achieve the right balance between such benefits and the risks inherent in public disclosure. It may also be questioned whether introducing a new set of reporting requirements without coordinating these with the patchwork of other similar requirements will not place an excessive administrative burden on the EU businesses concerned. Looked at from a different perspective we anticipate criticism that the proposal does not go far enough, for example, as regards the EUR 750 million threshold and the fact that non-EU information will not be split out by jurisdiction.

Should you have any queries or problems accessing the documentation, or if you would like to share any information that you think would be of relevance, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

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