Euro Tax Flash
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Euro Tax Flash
from KPMG's EU Tax Centre

Commission announcement on public Country-by-Country Reporting

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

On April 12, 2016 Commissioner Jonathan Hill officially announced and published the European Commission's proposal on public Country-by-Country Reporting. 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.

A draft proposal from the European Commission (EC) on public Country-by-Country Reporting did recently come into general circulation (see ETF 277). The final proposal does not deviate significantly from the circulated draft. The most significant changes included are:

- The report must cover accumulated earnings;

- To the extent there are material discrepancies between reported amounts of income tax accrued and income tax paid, the report must include an overall narrative providing an explanation for these discrepancies;

- The circulated proposal only required aggregated reporting on jurisdictions outside of the EU. The final proposal entails that a 'Common Union list' of certain tax jurisdictions

be adopted by the EC. Undertakings with operations in these ‘black listed’ jurisdictions will be required to report information on a disaggregated basis.

Background

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 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).

This proposal should be seen in the context of fighting against tax avoidance and aggressive tax planning. The initiative has three stated aims: 1) to align tax with economic activity, 2) to foster corporate responsibility and 3) to promote public debate on improving tax laws.

Details of the proposal

The report would require information on all members of the group (i.e. including non-EU members) within seven key areas: brief description of activities, number of employees, net turnover (including related party turnover), profit or loss before tax, tax accrued and paid, and finally the amount of accumulated earnings. The EU proposal for country-by-country reporting to tax authorities covers broadly similar information but is somewhat more extensive.

To the extent there are material discrepancies between reported amounts of income tax accrued and income tax paid, the report must include an overall narrative providing the explanation for these discrepancies.

The information must be broken down for each EU Member State where the group is active. Information concerning jurisdictions outside of the EU may as a starting point be reported on an aggregated level. For activities in certain listed jurisdictions, the information must nevertheless be provided separately. These jurisdictions will be included on a ‘Common Union list’ and will consist of jurisdictions which do not comply with principles for transparency and exchange of information, fair tax competition, standards set by the G20 and/or the OECD or other relevant standards.

Reports are to be published in a business register, but also on companies’ websites where they 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 not governed by the law of an EU Member State, 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, subject to conditions, 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

Before the proposal can be adopted it will have to be approved both by Member States’ 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).

Unless Member States adopt the new rules earlier than required, they will have to apply them in respect of financial years beginning on or after two years from the date the Directive is adopted.

EU Tax Centre comment

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 fully 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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