Euro Tax Flash from KPMG's EU Tax Centre

Background

Mandates to start interinstitutional negotiations

Overview of the proposed public CbCR rules

EU Tax Centre comment

Trilogue process to start on Public Country-by-Country Reporting proposal

Public Country-by-Country Reporting – Tax Transparency – Council of the EU – European Parliament

The Council and the European Parliament approved on March 3 and March 4, 2021 respectively, mandates for their respective negotiating positions in anticipation of the start of interinstitutional negotiations (so-called "trilogue") on the public Country-by-Country Reporting proposal. Negotiations are expected to begin shortly, with the aim to reach agreement on the directive at second reading ("early second reading agreement"), before the end of the Portuguese Presidency (30 June 2021).

Background

In April 2016, the European Commission presented a proposal on public Country-by-Country Reporting requirements for Multinational groups headquartered in the EU with a total consolidated group revenue of at least EUR 750 million (the "public CbCR directive" of "the Directive")

While the initiative has been in deadlock ever since, due to disagreements on its legal basis, a breakthrough was achieved in February 2021, as a result of certain countries changing their previous position and agreeing to support the proposal – see ETF 443 for more details.

Mandates to start interinstitutional negotiations

Following the February 25, 2021 exchange of view among Member States' internal market and industry ministers during an informal public videoconference of the Competitiveness Council configuration (COMPET), on March 3, 2021, the Committee of the Permanent Representatives

of the Governments of Member States (Coreper) mandated the Portuguese Presidency to enter into interinstitutional negotiations, with the aim of reaching an agreement on the public CbCR directive. The Council negotiation mandate is based on the compromise text advanced earlier this year by the Portuguese Presidency's, which deviates slightly from the initial proposal drafted by the Commission. The main changes are meant to clarify the aim of the proposal, which is to improve transparency and reporting related to companies. The compromise text also includes the so-called "comply or explain clause", under which companies would be given the possibility to omit some of the information otherwise disclosable when the disclosure would be seriously prejudicial to their commercial position.

The following day, on March 4, 2021, the European Parliament also approved the start of the negotiations. The mandate was approved through a vote during in a joint meeting of the Parliament's Committee on Economic and Monetary Affairs (ECON) and the Committee on Legal Affairs (JURI) meeting (64 members voted in favour, five against and four abstained – 43 votes in favour were needed for adoption). In a press release issued subsequent to the vote, one of the lead negotiators for the Parliament noted their commitment to reach an agreement under the Portuguese Presidency. The European Parliament's negotiation position is based on the text adopted by the Parliament on July 4, 2017 and reconfirmed in its first reading on March 27, 2019. The Parliament's position adds to the Commission's original proposal, mostly in terms of broadening the applicability of the disclosure requirements and the level of detail to be included in the report, as well as by requesting the addition of a safeguard clause for sensitive corporate data, allowing multinationals to temporarily omit certain confidential information.

Overview of the proposed public CbCR rules

Please note that the summary below provides an overview of the public disclosure rules, as set out in the Council's compromise text. Notes on the Parliament's text are included separately.

Who is going to be affected

The Directive applies to EU headquartered companies with a consolidated net turnover exceeding EUR 750 million in each of the last two consecutive financial years.

For non-EU headquartered companies, the legislation is relevant if they exceed the threshold above and their EU presence includes either medium-sized or large subsidiaries (as defined in Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings), or branches that meet certain criteria in terms of net turnover.

The non-EU ultimate parents have the option to publish the required information on their website and assign one of its EU subsidiaries / branches to file the report with the trade registry in its EU Member State of residence. Alternatively, if the report is not published on the non-EU parent's website, the publishing and filing obligation would shift to each EU subsidiary or branch.

The obligation refers to a report on income tax information of the non-EU ultimate parent, to the extent that this information or report is available to the entity designated to carry out the disclosure. If this information is not available or not provided, the branch or subsidiary would be required to publish a statement as to why the report on income tax information could not be published and made accessible.

If a subsidiary of a non-EU headquartered company exceeds a net turnover of EUR 750 million, for each of the last two consecutive financial years, it will also be subject to individual reporting requirements.

What to include in the report?

The following information would need to be disclosed (for the whole group):

- nature of activities;
- number of employees;
- net turnover, including transactions with related parties;
- profit / loss before tax; corporate income tax accrued;
- corporate income tax paid;
- accumulated earnings.

The information should be reported separately for each Member State, as well as for each country listed on the EU list of non-cooperative jurisdictions for tax purposes. Aggregated data would have to be provided for the rest of the world.

Companies covered by the rules could chose not to report commercially sensitive information. The omission must be disclosed and explained in the report, and companies would be requested to make it public in a future report within six years. Information related to countries included on the EU list of non-cooperative jurisdictions may never be omitted.

How to report?

The information would have to be published on the reporting entity's website. In addition, the report must also be filed directly with the national central register, commercial register or companies register in the relevant Member State. As mentioned above, as an exception, non-EU headquartered companies can elect to publish the report on their website and designate one of their EU subsidiaries / branch to file the information with their trade registry. The directive does not include a specific format for the data, but it requests that Member States allow that the information corresponds the country-by-country templates from the Council Directive 2011/16/EU.

Start date

The draft directive does not include a concrete start date, which will depend on the speediness of interinstitutional negotiations, but does provide some provisional timelines. It is proposed that Member States would transpose its provisions into their national legislation within two years from the date the directive enters into force (on the twentieth day following that of its publication in the Official Journal of the EU). It is proposed that the new rules would apply, at the latest, from the commencement date of the first financial year beginning on or after one year from the transposition date.

Note that this timeline is subject to change during the trilogue and that Member States may choose earlier transposition and reporting deadlines.

The Parliament's mandate

The Parliament's version of the text includes more extensive publication requirements, *inter alia*:

- the information requested from multinationals should be presented separately, including for each tax jurisdiction outside the EU;
- companies would be allowed to temporary omit the disclosure of commercially sensitive information, only provided they obtain an approval from the local authorities (if the relevant authority is not a tax one, the domestic tax office should be involved in the approval process). In addition, Member States would be required to transmit the omitted information, confidentially, to the Commission;
- additional items of information would have to be reported, including a split between turnover from transactions with related parties and non-related parties, fixed assets, preferential tax treatment, government subsidies, donations to politicians or political organisations;
- harmonized reporting templates are requested;
- companies would have to make the report available free of charge, and submit it to a public registry managed by the Commission;
- a recommendation that penalties for non-compliance with the rules could include, besides administrative fines, exclusions from public calls for tenders and from the awarding of structural funds.

EU Tax Centre comment

Whilst there are differences between the European Parliament's and the Council's negotiating positions, official statements made by the representatives of each of the two institutions suggest that both parties are committed to starting the trilogue process and swiftly reaching an agreement in the first half of 2021. Once a provisional agreement is reached based on trilogue meetings, the act could be adopted under the "early second-reading agreement", under which the Parliament approves without amendments the Council's position at first reading.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

Raluca Enache
Director, KPMG's EU Tax Centre

Privacy | Legal

You have received this message from KPMG’s EU Tax Centre. If you wish to unsubscribe, please send an Email to eutax@kpmg.com.

If you have any questions, please send an email to eutax@kpmg.com

You have received this message from KPMG International Limited in collaboration with the EU Tax Centre. Its content should be viewed only as a general guide and should not be relied on without consulting your local KPMG tax adviser for the specific application of a country's tax rules to your own situation. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

To unsubscribe from the Euro Tax Flash mailing list, please e-mail KPMG's EU Tax Centre mailbox (eutax@kpmg.com) with "Unsubscribe Euro Tax Flash" as the subject line. For non-KPMG parties – please indicate in the message field your name, company and country, as well as the name of your local KPMG contact.

KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

© 2021 Copyright owned by one or more of the KPMG International entities. KPMG International entities provide no services to clients. All rights reserved.

KPMG refers to the global organization or to one or more of the member firms of KPMG International Limited (“KPMG International”), each of which is a separate legal entity. KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. For more detail about our structure please visit home.kpmg/governance.