Euro Tax Flash from KPMG's EU Tax Centre

Background

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European Parliament formally adopts EU public Country-by-Country Reporting

Public Country-by-Country Reporting – Tax Transparency – European Parliament

On November 11, 2021, the European Parliament formally adopted the EU public Country-by-Country Reporting directive (the Directive), at second reading. This was the last step in the adoption process. Publication in the Official Journal of the European Union is expected shortly, with the Directive entering into force twenty days after publication - most likely in December 2021. Member States will have 18 months, i.e. until June 30, 2023 to implement the Directive into domestic law, and the rules would become applicable from June 2024, i.e. apply with respect to financial years starting on or after this date.

Background

In April 2016, the European Commission presented a proposal on public Country-by-Country Reporting requirements for multinational groups operating in the EU with a total consolidated group revenue of at least EUR 750 million.

The initiative was in political deadlock until early 2021, due to disagreements on its legal basis, in particular on whether the Directive should be based on:

- article 50 of the Treaty on the Functioning of the European Union (TFEU), meaning that it would be subject to the ordinary legislative procedure – requires qualified majority voting in the Council, or
- on article 115 TFEU (i.e. treated as a tax file), meaning that it would be subject to the special legislative procedure – the common procedure used in tax matters and subject to unanimous approval at Council level.

A breakthrough was achieved in February 2021 in the Council of the EU, as a result of certain countries changing their previous position and agreeing to support the proposal. 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 Directive.

On June 1, 2021, the Council and the European Parliament, following the third trilogue meeting, announced that they reached a provisional political agreement on the public CbCR Directive. The compromise text agreed upon with the European Parliament was adopted by the Council in September 2021 – see ETF 456. On October 28, 2021, the Economic and Monetary Affairs Committee of the European Parliament approved the Council's position.

European Parliament vote

On November 11, 2021, the European Parliament approved the Council's position on the compromise text of the Directive, without amendments. Therefore, the Directive is deemed to be adopted at second reading. It is expected that the text will be published in the Official Journal of the European Union shortly. The Directive will most likely enter into force in December 2021 - on the twentieth day following its publication in the Official Journal.

In a statement published after the vote, the European Parliament noted their support and recommendations on public disclosure of profits and taxes paid by multinationals, and welcomed this latest development. In a previous press release issued before the vote, the two rapporteurs who led the negotiations with the Council, on behalf of the Parliament, also stressed that the rules could be strengthened in the future. In their view, the approval of the compromise text represents a stepping stone in terms of tax transparency, based on which further progress could be achieved.

EU Tax Centre Comment

Assuming the text enters into force in December 2021, Member States would have until June 2023 to transpose the Directive into local law and the rules would become applicable from June 2024. For calendar year taxpayers, the reporting obligation would therefore be due with respect to financial year 2025, with a report due 12 months after the end of the balance sheet date.

However, Member States are at liberty to apply the rules earlier than the set deadline, so the applicability of the new rules should be monitored on a Member State by Member State basis. As an example, in the case of the disclosure requirements for the extractive industry - Directive 2013/34/EU1 and Directive 2013/50/EU, two Member States (France and the UK) decided on an early implementation of the rules.

Moreover, taxpayers would also have to monitor closely how different Member States will decide to implement specific provisions of the Directive, including:

- the implementation of the so-called "safeguard clause", under which Member States can choose to allow in-scope groups to defer the disclosure of commercially sensitive information for a maximum of five years – with the exception of data related to jurisdictions on the EU list of non-cooperative jurisdictions (Annex I and II);
- penalties for non-compliance, which the Directive leaves up to the Member States to lay down.

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

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