European Commission proposes public reporting requirements for multinationals

On 12 April 2016, the European Commission proposed measures that would require the largest companies operating in the EU to publish annually a report disclosing the profits earned and tax paid in each member state, as well as other information, on a country-by-country (CbC) basis. An aggregated reporting obligation would apply with respect to operations conducted outside the EU, and if the group includes a company incorporated in a listed tax haven, the information would have to be disclosed on an individual country basis.

In the Commission’s view, “greater transparency of companies is needed to enable public scrutiny of whether tax is paid where profits are produced.” Although the G20/OECD’s base erosion and profit shifting (BEPS) project includes a requirement to implement CbC reporting to tax authorities (BEPS action 13), which the Commission intends to adopt on a pan-European basis though an EU directive, the new proposal is separate and would require public reporting for companies operating in the EU (for coverage of the proposed EU anti-avoidance package that includes the directive, see World Tax Advisor, 12 February 2016). The new proposal for public reporting states that “information should be based on the reporting specifications of BEPS’ Action 13 and should be limited to what is necessary to enable effective public scrutiny.”

URL: http://newsletters.usdbriefs.com/2016/Tax/WTA/160212_1.html

Assuming the European Commission’s proposal is adopted, it will be implemented through amendments to the existing EU accounting directive governing the disclosure of income tax information. As such, the proposed measures do not relate to the harmonization of tax rules, which would require the unanimous agreement of the 28 EU member states; instead only qualified majority approval would be needed – broadly, approval of 16 member states representing at least 65% of the European population. The approval of the European Parliament also is required.

Overview of proposal

**Affected parties:** The proposed rules would apply to EU-based parent companies of multinational groups (MNCs) that have more than EUR 750 million in net turnover. MNCs headquartered outside the EU would be subject to the rules where the group has more than EUR 750 million in net turnover and the group operates in the EU through medium or large subsidiaries or branches (based on existing EU thresholds). Accordingly, the Commission expects that companies accounting for about 90% of corporate revenue in the EU would be subject to the reporting requirements.

The proposal would apply to all industry sectors (including extractive and logging industries already subject to different rules on public reporting of payments to governments). However, an exemption clause would prevent double reporting for financial institutions already subject to the public reporting rules under EU banking legislation.

**Reporting requirements:** The report would have to include information relating to the ultimate parent undertaking of the MNC, including activities of all affiliated undertakings consolidated in the ultimate parent’s financial statements. The information to be disclosed would include:
• The nature of the activities;
• The number of employees;
• The total net turnover, which would include turnover made with related and unrelated parties;
• Profit or loss before income tax;
• The amount of income tax accrued (current tax expense) as a result of profits made in the relevant year;
• The amount of income tax paid during the relevant year; and
• Accumulated earnings.

The information would have to be disclosed for each EU member state in which the company was active. Non-EU information would be able to be aggregated, except for information related to certain tax havens (i.e. information relating to operations based in third countries that the Commission considers “do not respect international tax good governance standards”). In the latter case, information would have to be provided on a CbC basis.

Further work will be undertaken to draw up a common list of tax jurisdictions that are considered not to comply with international tax good governance standards, with the final decision on whether a tax jurisdiction will be included in the list made following a consultation with the relevant jurisdictions. The criteria will be based on the External Strategy for Effective Taxation, released on 28 January 2016, and the European Commission intends that this work should be completed by the end of 2016. Tax jurisdictions will be assessed on compliance with the following:

• Transparency and exchange of information;
• Fair tax competition;
• Standards set by the G20 and/or OECD; and
• Other relevant standards, including international standards set by the Financial Action Task Force.

Information in the report would have to be provided in the currency used in the consolidated financial statements, and explanations would be required at the corporate group level where there are material discrepancies between the taxes actually paid and the taxes accrued.

The consolidated report on income tax information would have to be published with a business register in the EU and made accessible to the public on the company’s website in at least one of the official languages of the EU, although the proposals are silent as to when the report would have to be published. Reports would have to be accessible for at least five consecutive years.

**Reporting party:** If the ultimate parent company for the group is incorporated in an EU member state, that parent company would be the entity responsible for preparing and publishing the public information report. If the ultimate parent company for the group is situated outside the EU, but the group has qualifying subsidiaries and branches in the EU, the non-EU parent would have the option of publishing its report on income tax information on its website and allowing one of its EU subsidiaries to file the report with an official business register in the EU. Alternatively, the EU-based medium and large subsidiaries (or branches of a comparable
size where no such subsidiaries exist) each would be required to publish the report of the ultimate parent.

**Compliance:** The disclosure would have to be reviewed by the reporting entity’s statutory auditors to assess compliance, and comment by exception in audit reports. It does not appear that an audit of the underlying information would be required.

Penalties for failure to comply with the directive are left to member states, in accordance with the accounting directive. National authorities would be permitted to impose fines on noncomplying companies, provided the penalties are “effective, proportionate and dissuasive.”

**Comments**

In 2015, the Commission conducted a public consultation on corporate tax transparency in the EU. It is fair to note that the businesses, professional firms and professional bodies responding did not favor public CbC reporting. However, equally unsurprisingly, nongovernment organizations did favor its introduction, as does the European Parliament, which has an equal role with the Council of Ministers in legislating in this accounting area. This proposal reflects the outcome of this work.

The Commission considers that the proposal is proportionate and will not jeopardize competitiveness. However, business likely will remain concerned that the reporting obligation would create a competitive disadvantage and additional administrative burdens.

Although separate from BEPS action 13 (and the draft directive that would implement action 13 throughout the EU), alignment of the data points to most of those required by action 13 is helpful; it is to be hoped that the first publication date will be after the action 13 report is delivered.

MNCs would need to carefully consider whether to provide additional information to explain the tax position set out in their report more completely. Some MNCs may prefer public information to be subject to some form of external scrutiny.

The council of ministers is expected to discuss the proposal in June, and it also will need approval of the European parliament. If the public reporting proposal is adopted, EU member states will have to transpose the changes into their national legislation within one year following the entry into force of the amended accounting directive.

— Bill Dodwell (London)
Partner
Deloitte United Kingdom
bdodwell@deloitte.co.uk
About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see http://www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Disclaimer
This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.