



European Commission proposes public disclosure of MNE's tax information

Global Transfer Pricing Alert 2016-016

A recent European Commission proposal calls for the imposition of a public country-by-country (CbC) reporting requirement on multinational enterprises (MNEs) operating in the European Union. The April 12 proposal, which calls for amendments to the EU's Accounting Directive, would require some MNEs to disclose financial information.

The proposal is separate from the EU's proposed harmonized implementation of a CbC reporting requirement as part of the Anti-Tax Avoidance Package, which is based on the final recommendations of the base erosion and profit shifting (BEPS) project released by the OECD in October 2015. This proposal would give tax authorities automatic access to selected tax and financial information of MNEs related to their operations in the EU.

Under these two initiatives, some MNEs would be subject to the obligation to submit two CbC reports: a full CbC report to be filed with the tax authorities in the MNE's headquarters country, and a limited CbC report that would be available to the public.

Public country-by-country reporting

The European Commission on April 12 proposed public disclosure reporting requirements for MNEs operating in the EU (including non-European MNEs doing business in Europe) with global revenues exceeding €750 million per year. If adopted, the proposal would amend Directive 2013/34/EU of the European Parliament and of the EU Council of 26 June 2013 on annual financial statements, consolidated financial statements, and related reports of certain types of undertakings (the Accounting Directive).

Under the amended Accounting Directive, the information to be disclosed on a country-by-country basis would include information on the nature of the company's activities, number of employees, total net turnover (including related-party and third-party revenue), profit or loss before income tax, amount of income tax due and paid, and accumulated earnings.

This information would have to be disclosed individually for each EU country and tax haven in which an MNE is active, and in the aggregate for other tax jurisdictions worldwide.

The information would be made available in a stand-alone report accessible to the public for at least five years on the company's website, and it should also include explanations of any discrepancies between the amounts of income tax actually paid and income tax accrued. Companies would also have to file the report with a business register in the EU.

The proposal has now been submitted to the European Parliament and the EU Council for their consideration and final adoption by qualified majority, not unanimous agreement. Thus, 55 percent of EU member states representing at least 65 percent of the total EU population must vote in favor of the measure. Once adopted, the new directive would have to be

transposed into national legislation by all EU member states within one year after its entry into force.

The amendments proposed to the Accounting Directive tie in with the draft directive on the automatic exchange of information in the field of taxation between tax authorities on several accounts, specifically, regarding the scope of information to be submitted, and the fact that the same MNEs would be subject to both disclosure requirements. Based on European Commission press releases, it appears that in terms of content, the information that would be available to the general public is in some respects less detailed in terms of tax data to be provided than the CbC reports that are to be filed with the tax authorities.

Country-by-Country reporting as an element of the Anti-Tax Avoidance Package

The Council of the European Union (ECOFIN) on March 8 reached a political agreement on a draft directive on the exchange of tax-related information on the activities of MNEs. The draft directive is prepared in the form of an amendment to the EU's existing framework for automatic exchange of information in the field of taxation between tax authorities, by Directive 2011/16/EU (EU Directive on Administrative Cooperation).

The amended directive will ensure the harmonized implementation, at the EU level, of an OECD recommendation (as specified in the BEPS final report) requiring MNEs with total consolidated group revenue of at least €750 million to report detailed country-by-country tax-related information, and national tax authorities to exchange that information automatically.

Under the amended directive, parent companies of MNEs would be obligated to file their CbC report with the tax authorities of the member state where they are tax residents. The CbC report should include the following information:

- Revenues, profit (loss) before income tax, income tax paid and accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents
- Identification of each constituent entity of the group, including jurisdiction of tax residence or the jurisdiction under the laws of which such constituent entity is organized and the nature of its main business activity or activities.

The draft directive provides a CbC reporting template that, in its current version, is the same as the CBC reporting template introduced as part of the BEPS final report, *Transfer Pricing Documentation and Country-by-Country Reporting*.

It is proposed that MNEs file their CbC reports for fiscal year 2016 within 12 months from the end of their fiscal year.

If an MNE parent company is not a EU tax resident and its non-EU jurisdiction is not a party to agreements that require or provide legal authority for the automatic exchange of such information, and does not file a CbC report itself, the report would have to be submitted through a EU "surrogate parent entity" appointed by the MNE, as sole substitute for the parent company. Such "secondary reporting" will be optional in 2016 but mandatory from fiscal year 2017.

Under the amended directive, the tax authorities would have to exchange CbC reports automatically (with other relevant member states, when an MNE is resident or subject to tax through a permanent establishment) within 15 months after the last day of the fiscal year of the MNE. There will be an 18-month submission period for the first CbC report covering fiscal year 2016.

The draft directive indicates that the information gathered through the exchange is intended to be used by the tax authorities for purposes of assessing high-level transfer pricing risks and other BEPS-related risks. There are numerous statements that no transfer pricing adjustments should be made by the tax authorities based on the information included in the CbC report only (further inquiries into multinational transfer pricing arrangements/documentation or into other tax matters should still be performed before any assessment is made).

Before the draft directive is adopted:

- The European Parliament must render an opinion;

- National parliamentary reservations must be lifted; and
- The text of the directive must be translated into all EU languages.

Detailed CbC reporting is the first element of the Anti-Tax Avoidance Package¹ of proposals published by the European Commission on January 2016. The package is based on the final recommendations on BEPS approved by the OECD in October 2015. Apart from CbC reporting, the package includes a proposal for an anti-tax avoidance directive, a recommendation on tax treaty issues, and a communication on an external strategy for effective taxation. The Anti-Tax Avoidance Directive is scheduled for approval by the European Council on May 25, 2016. It must be approved unanimously by all 28 EU member states, but it is unclear whether this will be feasible.

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