European Parliament votes to pass public country-by-country reporting

12 November, 2021

In brief

Following a final debate between MEPs in the European Parliament plenary session, a majority of MEPs voted on 11 November to pass changes to amend Directive 2013/34/EU, which deals with financial reporting of certain types of undertakings (the EU Accounting Directive). This vote (and the adopted text of the proposal available here) follows the political agreement reached with the Council in June and a further updated text that was agreed in September 2021, available here. The amendments have become known as public country-by-country reporting (pCbCR) requirements.

The agreed changes to the EU Accounting Directive will require multinational groups or standalone undertakings with a total consolidated revenue of at least €750m, over a period of two consecutive financial years, whether headquartered within the European Union or not, to publicly disclose the corporate income tax they pay in each EU Member State plus in each of the countries that are either on the EU list of non-cooperative jurisdictions for tax purposes (the 'EU's blacklist'), or listed for two consecutive years on the list of jurisdictions that do not yet comply with all international tax standards but have committed to reform (the 'EU's grey list').

The vote marks the passage of the final political hurdle for this measure. The next step will be the publication of the amended Directive in the Official Journal. The Directive will enter into force 20 days after publication in the Official Journal. EU Member States will then have 18 months to transpose the Directive into domestic legislation. It is possible Member States could transpose it in a shorter time, and, thus, that it could be effective earlier. But, if transposition does not occur ahead of the mandated timeline, businesses can expect that the additional disclosure requirements will become applicable in mid-2024, that they will apply to accounting periods beginning after that date, and that disclosure will first be required in the latter part of 2025 (or, more likely, 2026 for those with a 31 December accounting year end).

Our previous Tax Policy Bulletin on the pCbCR proposal (available here), outlines further information on the measure and our observations on the impact of this for in-scope businesses.

In detail

The changes to the EU Accounting Directives are one of a number of transparency measures that require businesses with EU operations to report increasing levels of information about their tax affairs. According to the

adopted changes to the EU Accounting Directive, a company's report should include the amount of income tax accrued during the relevant financial year. The accrued amount equals the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches in the relevant tax jurisdiction (but does not include deferred tax or provisions for uncertain tax liabilities) as well as the amount of income tax paid on a cash basis, which is the amount of income tax paid during the relevant financial year by undertakings and branches in the relevant tax jurisdiction (to include withholding tax paid by other undertakings with respect to payments to undertakings and branches within a group).

The adopted changes to the EU Accounting Directive do not prescribe reporting on the effective tax rate, nor does it prescribe a reconciliation between the ETR and the statutory tax rate like international accounting standards do (IAS 12). A narrative to explain a company's tax strategy and how it is implemented, including an explanation of any divergence between a company's ETR and the statutory rate, will become more relevant, even more so when tax is being included in a company's ESG strategy. An increasing number of companies report according to the (voluntary) standards of the Global Reporting Initiative (GRI). In December 2019 GRI adopted a reporting standard on tax (GRI-207) that came into effect on 1 January 2021. Applying the GRI-207 tax standards does not exempt companies from the reporting requirements of public CBCR, and vice versa.

What should be reported?

Reporting on elements such as the number of employees, tax paid on cash basis and tax accrued on profit/loss are part of both disclosure rules (see a comparison).

Legal basis underpinning the Directive remains subject to debate

The legal basis underpinning this proposal is Article 50(1) of the TFEU (since the proposal amends an existing Directive which is based on that Article). This applies a qualified majority voting procedure, rather than a unanimous voting requirement which typically applies to direct tax matters (under Article 115 TFEU).

A qualified majority of Member States have accepted this approach. However, Croatia, Cyprus, Czech Republic, Hungary, Ireland, Luxembourg, Malta and Sweden have taken issue with it and have issued statements, noting that they believe that the voting procedure set out in Article 115 TFEU should be followed "*since both the aim and the content of the proposal relate to 'fiscal provisions'.*" In the voting round prior to this adoption by the European Parliament, which involved the Council adopting its first reading of the measure in September 2021, some of these countries either voted against (Cyprus and Sweden) or abstained from the vote (Czech Republic, Ireland, Luxembourg and Malta), noting these concerns, despite their stated general support for tax transparency.

The safeguard clause and meaning of 'seriously prejudicial'

As noted in our previous bulletin, under the now adopted Directive - if provided for in national law -- businesses will have the ability to defer the disclosure of certain information for a limited number of years, provided they clearly disclose the deferral along with a reasoned explanation in the report. Unlike the very earliest versions of this proposal, this ability to allow businesses to defer disclosure is not required, and will, thus, remain at the discretion of the Member State as they can choose whether to allow this safeguard when transposing the Directive. The deferral may apply to one or more specific items. Member States could potentially limit what can be deferred in this regard. We are not aware of any analysis or guidance on the EU Accounting Directive exclusion. Any inconsistencies in the national implementation may result in uneven reporting requirements between the Member States and indeed secondary disclosure requirements in other countries.

A deferral would only be possible whereby public disclosure of the required information could seriously prejudice an undertaking's commercial position, as competitors could draw significant conclusions about its current activities

from the information disclosed. It would seem necessary that the undertaking needs to be prepared to demonstrate that disclosure of the information would be 'seriously prejudicial' to the commercial position of the undertakings to which it relates. A reasoned explanation of the causes for omission must be included with the report.

The takeaway

This measure is an important development, in that it will require enhanced reporting for large businesses in terms of the corporate income tax they pay in each EU Member State, and in black- or-grey-listed countries. For many businesses, this will require the reporting of such information publicly for the first time. Businesses should consider these new requirements as part of the broader consideration of overall tax strategy, governance and ESG objectives.

The adopted changes to the EU Accounting Directive will enter into force 20 days after publication in the Official Journal. EU Member States will then have 18 months to transpose the adopted changes into their national laws. Therefore, the provisions should become applicable for businesses no later than mid-2024 and, depending on when a business's accounting period begins and ends, the first reporting deadline will follow thereafter (possibly as early as the latter part of 2025, but more likely in 2026). A Member State could transpose it more quickly. The adopted changes to the EU Accounting Directive include a review clause; the rules will be reviewed in four years and possibly extended to other groups and additional items after an assessment.

In the context of its broader tax transparency agenda, the EU Commission will propose legislation that requires businesses (with turnover of more than €750 million) to report information concerning their effective tax rates. Further details on this and other transparency measures are expected to become public in early 2022.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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