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COUNTRY-BY-COUNTRY REPORTING

By Sandy Bhogal and Simon Slade

With a referendum on the UK's membership of the EU a possibility if the Conservatives win the next election, the "in or out" debate is something of a hot topic at the moment. The continuing drive towards tax transparency and country-by-country reporting brings into focus once again some of the potential downsides to being a member of the EU and also some of the benefits.

The pursuit of increased tax transparency has been gathering pace in a number of international organisations, including the EU, the OECD and the G20. It is common sense that in order to solve the perceived "problems" of global taxation, from outright fraud and the hiding of funds offshore, to erosion of the tax base through tax planning, it is necessary to have full sight of what the problem actually is. Hence, we have seen moves towards increased exchange of information between tax authorities and country-by-country reporting. There are many fundamental questions still to be resolved (e.g. should information be for governments only or should it be made public?), but there is no doubt in the direction of movement.

The EU introduced the Capital Requirements IV Directive (2013/36/EU) ("CRD IV") and the EU Accounting Directive (2013/34/EU) (the "Accounting Directive") in June 2013. Both of these directives include measures aimed at increasing transparency, even if this may not have been their primary purpose.

CRD IV requires, broadly, that all credit institutions and investment firms that are within its scope will have to publish certain information (names of entities and their activities, their turnover and number of employees) on a consolidated country-by-country basis. In addition, "globally systematically important institutions" (undefined in CRD IV, but the intention in the UK is that the Financial Stability Board will decide who this applies to) will also have to report profits and losses, taxes paid and subsidies received. The intention is for entities to report in their country of incorporation rather than their country of tax residence. The UK Treasury held a consultation in the autumn and published draft legislation on 19 November 2013, with the intention that reporting will begin on 1 July 2014.

The Accounting Directive requires large extractive companies (dealing with oil, gas and minerals) and logging companies to disclose full information on payments made to governments, including all taxes on income, profits, royalties and extractions. The requirements will have to be incorporated into domestic law by 1 July 2015 and once in place companies will have to report the information within six months of the end of the financial year.

There has been much lobbying from NGOs and from within Europe for a widening of CBCR. Following swiftly on from the introduction of the Accounting Directive were proposals to amend it

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and widen its scope. Indeed, Commissioner Barnier even referred to this in the press release confirming the adoption of the Accounting Directive. A Draft Opinion prepared by the Committee on Economic and Monetary Affairs of the European Parliament was presented to the Committee on Legal Affairs on 4 October 2013. The opinion proposes extending CBCR to all large EU businesses and also for compulsory auditing of all information provided. It argues that greater transparency leads to better corporate practices and sustainability, and suggests that EU companies should have better due diligence procedures in relation to supply chains, citing the horsemeat scandal and the Savar building collapse in Bangladesh as examples of why this should be done.

Following the Draft Opinion, it did not take long for industry bodies to raise their concerns with the Treasury. The primary concerns appear to include the workability, cost and usefulness of what is proposed in the absence of a full impact assessment, as well as the risk of poorly-informed anti-corporate publicity where information is made public without sufficient explanation, leading to misunderstanding and unfair criticism of businesses. The UK Treasury has made it clear that it also opposes a rush into full CBCR and would prefer to see a full impact assessment conducted. It has also been supportive of the OECD work on producing a reporting template as part of the initiative to tackle base-erosion and profit-shifting ("BEPS"), which is discussed in more detail below.

Action 13 of the OECD BEPS Action Plan called for the introduction of CBCR of income, tax paid and other indicators of economic activity. In July the OECD published its White paper on Transfer Pricing Documentation, which touched on associated issues, including CBCR, which was followed up by a Memorandum on Transfer Pricing Documentation and Country By Country Reporting issued in October in advance of a recently-held public consultation on the subject. All of which are indicators that it is being keenly pursued by the OECD (particularly as early resolution of Action 13 is likely to prove instrumental in implementing many of the other Actions). It is too early to know how the OECD proposals and the EU proposals will work together in practice. However, it seems that, regardless of what steps the EU takes, CBCR is not going to go away. It would appear prudent therefore for the UK to use its position in the EU to try and ensure that the implementation of CBCR in Europe is done in such a way and to such a timetable as it thinks best for the UK.

It appears that, once again, the UK may find itself at loggerheads with some of its fellow EU member states. The EU is seeking to impose measures on the UK which the UK does not agree with. However, the UK's presence in the EU has allowed it to make its views known early in the process and will continue to do so. If there is a prevailing view that CBCR is the way forward, then the UK may benefit from being in a position to influence its introduction. It may even be able to convince other EU members that the best way forward is to fully support the OECD's efforts, rather than seeking to unilaterally impose its own regime.

The Financial Transactions Tax ("FTT") raised similar issues. Whilst its proposed introduction was opposed by the UK, the UK's membership of the EU has enabled it to have some involvement in the process and to perhaps influence it, including bringing legal proceedings to challenge the chosen method of implementation. Had the UK not been a member of the EU, the impact of the FTT would still have been felt in the UK, but the UK would have had much less opportunity to make its views known and would not have been able to make the legal challenge that it has made.

In a time of such change, it may therefore be beneficial for the UK to remain in the EU, even if it does not agree with all of the EU's proposed policies.

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