Making it public

General Features | International Tax | Large Corporate | Management of taxes

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Bill Dodwell considers the next steps for public country-by-country reporting

There’s little doubt that public country-by-country reporting is an emotive topic for tax campaigners. Richard Murphy, now a professor at City University, claims to have invented the idea, arguing it would show in broad terms whether multinationals are reporting profits and paying tax based on the scale of their activities in particular countries.

The European Commission proposed a Directive last April. This has been the subject of legal argument, as several Member States consider that public reporting would be unhelpful. The Commission proposed using data prepared by multinationals for disclosure to tax authorities under Action 13 of the G20/OECD-led Base Erosion and Profit Shifting project. The Commission's idea was that using data already available would have minimised additional costs. The Council's Legal Service ruled that this would be a tax matter, no doubt on the basis that data required for tax purposes would be disclosed. As a tax matter, it could only become law with the unanimous consent of all Member States – and the Parliament has no meaningful role.

The next step was the publication on 19 December of a modified Presidency proposal. The Company Law Working Party discussed the issue nine times in 2016 and eventually considered that changes would help align the plan with company law and accounting – now requiring approval through qualified majority voting and with a positive vote from the European Parliament. The changes remove all mention of the BEPS project and now require reporting by EU state of turnover, profits, accumulated earnings, employee numbers and tax paid. Non-EU profits are simply aggregated, unless in non-cooperative tax havens when a separate account must be given. There's also an exception for groups where the parent is based outside the EU, where their EU subsidiaries need publish only information they have. There's another an exception from publication where the Member State judges that publication would be seriously prejudicial to the commercial position of the company. It is clear that the European Commission wishes to ensure that this Directive remains an accounting matter and making it clear that it's unrelated to BEPS is an important part.

The next move has come from the European Parliament. Its legal adviser concluded that the original draft directive was an accounting matter, not a tax matter. However, a much more important step has come from two committees of the Parliament – the ECON and JURI committees. They have just put forward a draft proposal for public reporting by all companies with sales over €40 million, which is taken from the EU definition of a 'large' company. The proposal also asks for much more information, including details of any public subsidies received and a break-down of all payments made to government authorities. The final change is that the committees would like information to be provided by individual country inside or outside the EU.

The joint recommendation will now go to both committees and, should they agree it, then to the Parliament for a vote. If passed at that stage, no doubt there will be an attempt to see whether there could be a Council-Parliament compromise. This latest move will clearly make it much harder to move positions closer together and there won’t be a Directive at all unless agreement is reached.

None of the various options put forward ask whether the figures disclosed have a sufficient relationship to the underlying tax liabilities, following the implementation of the BEPS recommendations. The overall approach to taxable profits agreed during the project is that profits should be allocated based on the value of the activities conducted in each country. The danger for companies making disclosures under these proposals is that observers could link profits to employee numbers. This will pose a burden for multinationals – and potentially tax authorities – to explain that profits should be allocated according to value. The proposals also miss out the multinational’s total contribution. In most EU states, corporate tax is only a small proportion of the total tax paid by companies. Something that truly asked what tax contribution a multinational made would want to know about employment taxes, property taxes and VAT collected.

Meanwhile, in the United States, President Trump has just signed a bill to withdraw the SEC rule requiring resource companies to publish payments to governments. EU parented resource groups will continue to make the disclosures, which are based on the Extractive Industries Transparency Initiative. Payments accounting is not the same as country-by-country reporting since it is simply a listing of payments made in a calendar year – but many resources groups choose to publish additional data to link it to their accounts.

Back in the UK, the Public Accounts Committee remains keen to encourage the Government to mandate public reporting. It held a parliamentary conference in December, with invited parliamentarians from twenty other countries. The MPs signed a declaration encouraging each other to hold their governments to account. The government’s approach is to support greater public reporting by companies of the tax they pay – but only if agreed multilaterally. The government has also not set out any details of the type of scheme it would support – no doubt waiting to see whether the EU can reach some form of compromise later this year.