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Tax transparency and companies:

1. Country-by-Country report:

The OECD's ("Organization for Economic Co-operation and Development") project BEPS ("Base Erosion and Profit Shifting") foresees, in order to improve transparency in favor of administrations, the implementation of a communication of fiscal information country by country ("Country-By-Country Reporting").

On the 17th of December 2015 the French National Assembly approved an amendment to the 2016 Finance Bill definitively implementing the country-by-country reporting. This measure was approved by the French constitutional court on the 29th of December 2015 and subsequently entered into force as article 223C of the French tax code ("Code général des impôts").

The companies concerned are those with consolidated accounts; those with annual consolidated group revenue equal or superior to 750 million EUR; those who control directly or indirectly subsidiaries located abroad or that have branches located abroad; those not owned by another French entity already within the scope of this measure or owned by a foreign entity falling within the scope of a similar provision under its foreign local legislation.

These companies will have to specify the distribution of profit and activities country by country as well as the turnovers ("chiffre d'affaire"), pre-tax profit, paid tax, assets and workforce.

The country by country report will be exchanged automatically between the pertinent tax administrations in accordance with applicable tax treaties and/or EU regulations under the condition of reciprocity but will remain confidential.

The format of the report that will be based on an international standard will be defined and established by a separate decree that will be published in a few months.

The report will have to be filed electronically for each fiscal year. Failure to comply could end up in the payment of annual penalties up to 100,000 EUR for each French entity.

This regulation will be applicable during the 2016 fiscal year for all fiscal years opened on or after the 1st of January 2016. The first reports will have to be filed by the end of 2017 and automatically exchanged between the countries in 2018.

French companies will have to ensure that the fiscal information collected is reliable and coherent with other published or communicated indicators.

2. Common Reporting Standard:

In October 2014, France adopted the OECD's Common Reporting Standard ("Norme Commune de Déclaration") that should be implemented by September 2017.

French groups will have to adapt to the different norms and statutes according to the countries with which they operate.

The Common Reporting Standard entails that tax administrations will have systematic knowledge of financial assets detained in foreign countries by tax residents. The information will have the possibility to automatically be exchanged between the countries have adopted the Common Reporting Standard.

In order to identify the resident of a Common Reporting Standard jurisdiction, the financial institution needs to obtain the holder's account self-certifications. The self-certification must include information of the state or states of tax residence as well as their fiscal identification number.

The financial institutions will transmit informations concerning the identity of the person having a tax residence in a Common Reporting Standard country, their accounts and the balance of their accounts as well as their financial incomes including items of sale.

The OECD Common Reporting Standard was adopted at the European Union level with the directive 2014/107/EU known as "DAC 2" that has been implemented by France in its article 1649 AC of the French Tax Code ("Code général des impôts") modified by article 44 of the law n° 2015-1786.

3. Automatic transfer of tax rulings:

On the 18th of March 2015, the European Commission presented a number of measures in its Tax transparency package including the automatic transfer to other member states of tax rulings. This would also concern price transfer prior agreements.

Often, a member state is not aware that a tax ruling has been given elsewhere that could have an impact on their own tax base. The Commission wants to avoid the effect of this lack of transparency enabling companies to use this to artificially reduce their tax contribution.

At the moment, it is at the member states' discretion to communicate decisions that could be relevant for another country. However, the Commission wants to remove this discretion.

Member states would be obliged to automatically exchange every three months informations of final tax rulings that would have a cross-border nature. National tax authorities will have to send this information in a short report on all cross-border tax rulings. The states receiving this information have the possibility to ask for precisions if needed.

These rules allow Member States to detect certain abusive tax practices by companies and take necessary action in response. It also encourages healthier tax competition, as tax authorities will be less likely to offer selective tax treatment to companies once this is open to scrutiny by their peers.

4. Other transparency obligations imposed by French law:

Companies have a requirement of documentation on price transfers. Indeed, since 2014, they have the obligation to provide a simplified documentation on price transfers to the administrations.

They also must prepare the complete documentation in the event of tax controls on the account recordings file ("Fichier des écritures comptables").

Large companies must present their analytical accounting in the event of tax control.

For those who have chosen to participate in the experiment of the relationship of trust ("relation de confiance"), they will have to transmit several documents on the company's activities, their accountancy and their operations (including external legal consultations).

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