Tax Transparency: Overview of Current and Proposed U.S. and International Initiatives

As increasing pressures on government budgets lead to austerity measures, a growing number of protesters, corporate watchdog groups, and policymakers are shining the light on worldwide corporate tax avoidance. Current and proposed disclosures at the entity and country levels will pull back the veil of tax secrecy and inevitably prompt more regulatory and tax authority oversight. These disclosures could also lead to damning front-page stories and, ultimately, tax code reform. Executives, along with the accountants and consults who advise them, should consider how tax transparency initiatives play a role in corporate strategy.

International Initiatives: In many foreign jurisdictions, each subsidiary within a group must file "accounts" (i.e., financial statements) with a regulatory body and these are made available to the public for no or a nominal fee. These filings will include details on intragroup activities (debt, management fees, and other transfer payments made within the consolidated group) and tax liabilities by jurisdiction.[1] While the websites are often in foreign languages, the actual filings are often in English so language is not a barrier to understanding these filings. These accounts disclosures are which led to the recent publicity about Google, Starbucks, and Apple's low tax liabilities in England (and the accompanying hearings and tax protests). Both the G20 and the Organization for Economic Cooperation and Development (OECD) are confronting tax avoidance and evasion through information sharing efforts, which also include revising tax treaties. Surprisingly, in January 2013, tax authorities from the BRICS (Brazil, Russia, India, China and South Africa) pledged to share information and tax collection practices with each other. Finally, the Extraction Industries Transparency Initiative (EITI) requires that signatory countries and the entities which extract natural resources from these countries publicly publish the taxes and royalties paid in each jurisdiction.[2] The EU recently extended country-level tax reporting (similar to EITI) for financial institutions.

US Initiatives: The EITI regime will soon be effective in the United States. The Dodd-Frank Act provides that SEC registrants in an extraction industry must annually report payments made by the company, its subsidiaries, or entities under its control to the U.S. and foreign governments by project and by country. The payments subject to disclosure include taxes, royalties, bonuses, dividends, and infrastructure improvements. For each payment, companies must provide the type and amount paid on a cash basis, the total for each category listed above, the government and country that received the payment, and the projects to which the payments relate. This initiative coupled with recent changes from FIN48, FACTA, and tax treaties reduces the transparency of tax positions in the US and abroad.

Reform Proposals: Proposals coming down the pipeline include "Publish what you pay." This idea is promoted by a number of public interest groups and entails comprehensive, country-by-country reporting of all government payments made by multinational organizations, whether publicly or privately held. Executives should anticipate that the country-by-country reporting required of EU financial institutions and U.S. extraction enterprises will be imposed by more jurisdictions—including U.S. states—on more industries.

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[1] For example, the UK filings are found at http://www.companieshouse.gov.uk/

[2] Country- and entity-level reports are posted at eiti.org.