PORTUGAL AND SPAIN'S COMPANIES FACE TAX TRANSPARENCY

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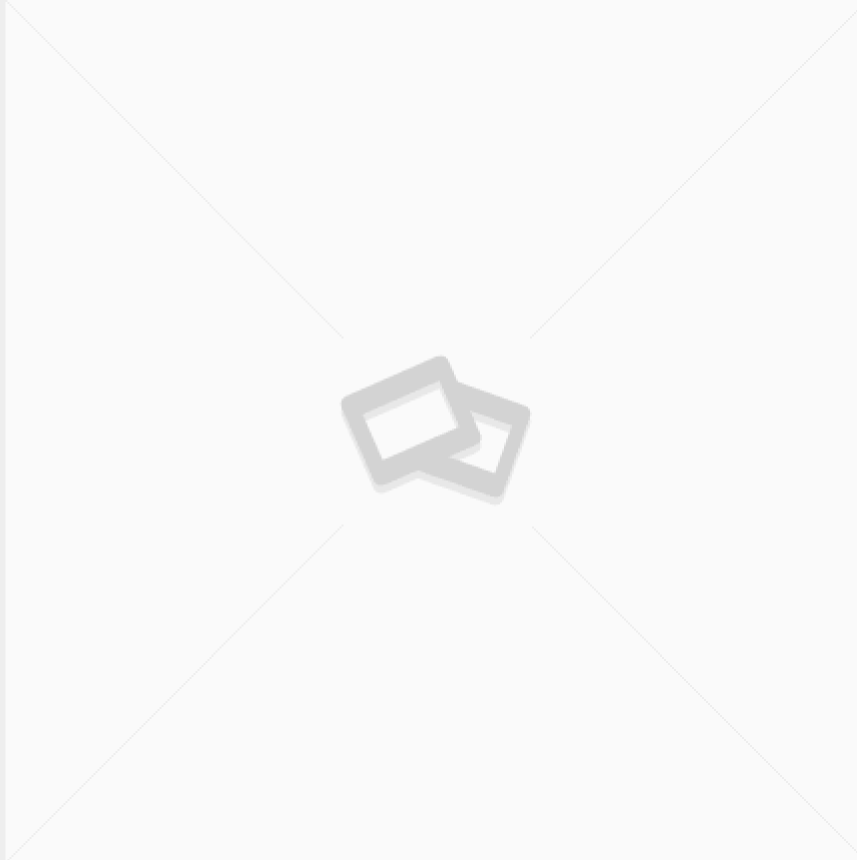

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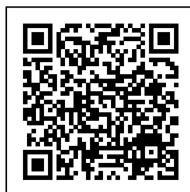

Calls for greater public scrutiny of multinational companies' accounts are leading to a pragmatic legislative response by the EU

The European Council is to push forward proposals for greater public scrutiny of multinational companies' (MNCs) accounts, and publish profits and taxes on a country-by-country basis, which has been given a cautious welcome by lawyers in Portugal and Spain.
"A common approach to taxation may be necessary but unlikely to happen at the EU level, as unanimity is needed, therefore regulators are being pragmatic by promoting greater transparency and clarity over national tax goals and policy," says Silvia Paternain, Global Head of Tax at Freshfields. "To be effective in a globalised economy, where countries compete for investment and

capital, any measures need to be adopted at international level.
The growing public scrutiny of the corporate income tax being paid by MNCs, with publicised claims of tax avoidance, prompted the European Commissioner for Internal Market and Services to state that new transparency rules should be put in place as quickly as possible. Among the proposals is the forced disclosure of group tax, profits, revenues and staff numbers to simplify national tax assessment and discourage the use of lower tax jurisdictions as operating hubs.
"The issue is no longer about the relative merits of opacity versus transparency, but rather how national tax authorities can best assess the liability of MNCs," says Francisco de Sousa da Câmara, Head of Tax at MLGTS in Lisbon. "Governments call for a world with greater tax transparency, while at the same time aggressively compete for international investment through the use of different tax rates and basis, with an extensive menu of tax incentives – some seem to forget fundamental EU principles such as the Right of Establishment when it suits them."
In Spain and the EU, they have seen a very aggressive approach being taken in the analysis of large companies' tax affairs, says Luis Briones, a tax specialist and former Managing Partner at Baker & McKenzie in Madrid. "But often with a very limited understanding of how they actually operate." A number of options are open to EU law-makers to achieve greater transparency to aid tax collection, say lawyers, including amending current Directives on disclosure of non-financial and diversity information by large groups, or further amendments to imminent new rules on accounting procedures.
New EU proposals already provide that from January 1st, 2014, European banks must disclose pre-tax profit or loss, taxes paid and subsidies received on a country-by-country basis. Information sharing is also on the rise between EU members: Spain, France, Germany, Italy and the UK recently agreed to pilot a multilateral tax information exchange facility. The proposed banking disclosure reforms allow for a trial period, which means that an extension of the rules may not come as quickly as lawyers hope. A decision on whether the information provided should be made public is unlikely before 2014. Nonetheless, by amending existing regulation, the EU's transparency goals could be achieved within the year, say lawyers, requiring only qualified-majority voting, and thus negating the challenge of seeking unanimity among all 27 Member States.
The EU proposals echo those made by the OECD; specifically its Base Erosion and Profit Shifting (BEPS) project that would require groups to disclose supply chain transfer pricing to national tax authorities in a simplified manner – to better allow them to challenge such measures.
"There is a clear momentum towards greater tax transparency that companies cannot ignore," says Briones. "Mandatory legislation is not guaranteed at EU level, but the more enlightened companies are already looking at the benefits of increased disclosure – to better manage the way their own information is presented and to avoid misinterpretation." He is now helping to lead a global analysis intended to combine the EU, OECD and US perspectives. "National politicians' calls for companies to pay more tax based on an ethical analysis of their operations does very little to help avoid ambiguities – it may actually discourage inward investment, as companies seek to avoid the economic or reputational risk associated with doing business in a specific country."At the end of the day most companies want greater certainty over their costs, and this includes their tax liabilities. So they have as much to gain as the national authorities by encouraging a more joined-up approach to regulation.