Beat: Business

Spain signs an agreement for multinational companies to report on tax payments

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USPA NEWS - In Paris and together with another 30 States, the Government of Spain signed the Multilateral Competent Authority Agreement on Country-by-Country Information Exchange, sponsored by the OECD. The agreement represents an important step forward in international tax information transparency.

The event was attended by the Secretary-General of the OECD, Angel Gurria. The country-by-country exchange of information is included in the so-called OECD BEPS Action Plan (Base Erosion and Profit Shifting) aimed at combating tax base erosion, aggressive fiscal planning and the artificial transfer of company profits. It means that multinational companies are required to present a country-by-country report containing a breakdown of the taxes they pay in all the States where they operate.

According to the OECD, the country-by-country reports must be presented annually in the jurisdiction of the multinational group's parent company and will be automatically shared with the other signatory States via an inter-governmental information exchange process. The European Commission (EC) is working along the same lines and plans to present regulations in this regard soon.

In the case of Spain, the Government has already anticipated the OECD recommendations and EC forecasts to recently include this provision in its internal regulations; specifically, the new Corporate Income Tax Regulations, approved in July 2015, on the tax reform. These regulations state that multinational companies resident in Spain with a turnover in excess of 750 million Euros and with the status of a group's main company will be required to provide country-by-country information to the Spanish Tax Agency as from 2016 on the tax payments they make in each country.

Although the country-by-country information already refers to tax periods as from 2016, the information exchange will become effective as from 2017 in order to coincide with the OECD. The subsidiaries of companies residing in a territory with which no automatic information exchange agreement exists will also be required to provide country-by-country information. The information to be provided includes revenue, gross turnover, taxes accrued and settled, equity, the net accounting value of material assets and workforce (number of employees) for each company.

The multilateral agreement signed in Paris strengthens the effects of Spanish regulations already in force. Spain will be able to obtain detailed information on the taxes paid by multinational companies whose parent company resides in the signatory States to the agreement without needing to sign bilateral agreements with each one. For example, the Spanish Tax Agency will be able to have information on the taxes paid by a subsidiary located in Switzerland, France or Germany (countries that have signed the multilateral agreement) and vice-versa.

The goal is to increase knowledge as far as possible with a view to avoiding aggressive fiscal planning practices that enable companies to drastically reduce tax payments to a minimum or nil by taking advantage of international taxation differences. The information obtained will be exclusively used by the tax authorities, thereby guaranteeing the principle of tax data confidentiality.

According to the OECD, this information will also help increase knowledge about the formulation of transfer pricing (the prices used for the exchange of goods and services between the parent company and the subsidiaries of a single multinational group), which will be used to streamline tax inspection resources. The development of rules on transfer pricing documentation is one of the actions included in the BEPS project.

Board of directors, fiscally accountable

Furthermore, the Government of Spain has included other OECD recommendations on improvements to corporate governance in its legislation. These include attributing non-delegable power to the board of directors regarding the establishment of a company's fiscal policy and fiscal risk control policy. This amendment has been incorporated into the new Capital Companies Act on Improvements to Corporate Governance.

Under this amendment, directors will be required to know and authorize all matters related to the company's tax payment strategy. Hence, they could be jointly responsible for any tax evasion or tax fraud actions adopted by the company. Furthermore, the Spanish Tax Agency and large companies recently strengthened the Code of Best Practices for increased transparency and legal certainty.

The Spanish Tax Agency will have access to preliminary information (preferably before the Corporate Income Tax declaration is filed) from companies on the financing structure and fiscal risks they deem most significant. A catalogue of 11 best practice indicators is established in such a way that the Spanish Tax Agency will be able to demand specific commitments to the code from the board of directors if it believes a company to be non-compliant.

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