Executive summary

On 29 December 2018, the Spanish Official State Gazette published Law 11/2018 (the Law), amending the applicable rules on the disclosure of non-financial and diversity information in Spain, in transposition of certain applicable European Union (EU) rules.

The Law provides for the mandatory disclosure of information related to: (i) environmental issues; (ii) social and employee-related matters; (iii) respect for human rights; (iv) anti-corruption and bribery matters; and (v) other information on the company (including the company’s sustainable development commitments, subcontractors and suppliers, consumers, and tax information).

The information related to the above issues will have to be disclosed in the Annual Accounts of the Spanish entities and, more specifically, in the Management Report. This information will have to be published on the company’s website within six months from the end of the relevant financial year, and will have to be available for five years.

As part of the above, Spain has introduced a requirement, which is not included in the Directive, that Spanish companies disclose tax information as part of their non-financial reporting. This Alert is focused on the tax reporting obligations required from the enactment of this Law.
Detailed discussion

Scope of application of the new rules on non-financial reporting

This reporting is mandatory for Spanish entities meeting the following requirements:

- Their average number of workers employed during the year is greater than 500 (this threshold will be reduced to 250 after three years have lapsed from the enactment of the Law).
- They are deemed as “companies of public interest” or they exceed during at least two consecutive years, two of the following three thresholds:
  - Their total assets amount to more than €20 million
  - Their annual net revenues exceed €40 million
  - Their average number of workers exceeds 250

It is uncertain how Spanish rules will exempt from this reporting obligation those Spanish “sub-groups” of companies which are controlled by an entity resident in an EU territory where the relevant EU rules have also been implemented.

Tax information disclosed

Spanish entities obliged to disclose non-financial information under this Law, will have to disclose the following tax information:

- Profits obtained in each country
- Tax paid on profits
- Public subsidies received

When preparing this information, the Spanish companies must apply either a Spanish, an EU or an international framework which complies with the guidance provided for by the European Commission and the Global Reporting Initiative (the criteria for tax and payments to governments are currently under development). Moreover, the companies must indicate the framework on which they have based the information provided.

In the absence of clear guidance, groups will have to determine the criteria to determine the information to be included and/or provide additional supporting documentation, such as the fiscal policies or the framework to control and manage potential tax exposures.

Practical implications of this reporting information

This new reporting obligation establishes additional information requirements on Spanish companies.

Under this new reporting obligation, given that Spanish companies will need to disclose their tax information together with the Financial Statements (which, as per the Spanish applicable rules need to be prepared within three months from year-end and approved within six months from year-end), they will have to prepare this information long before the Country-by-Country Reporting (CbCR) reporting is required (31 December of the following year, as per the Spanish rules).

Furthermore, the information included in the Financial Statements is public, while the CbCR is only disclosed to the relevant tax authorities.

Provided that these disclosure obligations include some information that is also included in the CbCR, the information provided in both reporting obligations must be reconciled to avoid any potential mismatches.

Finally, given that this new reporting obligation applies to groups with turnover exceeding €40 million (and meeting the other requirements as per the above), certain companies which were not subject to CbCR obligations (where the threshold is €750 million), will have to implement the internal mechanisms and procedures to obtain and prepare the relevant information for this non-financial reporting.
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EYG no. 012874-18Gbl
1508-1600216 NY
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