Company Reporting Requirements

March 29, 2017

Corporate Governance

A number of new pieces of legislation have recently come into force or are due to come into force shortly which impose certain reporting obligations on both companies and limited liability partnerships in the UK.

This alert sets out the areas covered by the new legislation, who the legislation impacts and how, and the steps to be taken to ensure full compliance.

Group Tax Strategy

Introduction

Rules in the Finance Act 2016 require large businesses to publish annually online their UK tax strategy and impose sanctions for persistent uncooperative behaviour by large businesses in their dealings with Her Majesty's Revenue & Customs ("**HMRC**"). The rules have effect for financial years beginning on or after September 15, 2016.

Who needs to publish?

The requirements apply to groups or entities (both public and private limited companies and partnerships) with a turnover greater than £200 million and a balance sheet over £2 billion. For groups, it is the combined totals of all subsidiaries that must be used in making the calculation to determine whether a particular group or entity is caught by the requirements. In addition, a business not headed by a UK company not meeting the threshold in its own right may still need to publish its strategy if it satisfies the Organisation for Economic Co-operation and Development's 'Country-by-Country Reporting' framework threshold of a global turnover of more than €750 million. The requirements also extend to multinational enterprises who would be subject to country-by-country reporting requirements in the UK either in their own right or if the head of their group were UK tax resident. This could therefore catch small UK subsidiaries of large multinational groups.

Many listed companies already voluntarily publish details of their tax strategy, often on a worldwide basis, but it is important that the tax strategy published in accordance with the requirements of the Finance Act 2016 deals specifically with the strategy in relation to UK taxation.

What should the strategy include?

A tax strategy should set out the approach of the group or entity to:

- structuring tax planning, including details of any code of conduct;
- the drivers behind tax planning, including the weighting given to these in formulating tax strategy;
- business tax arrangements, including an outline of tax planning motives and their relative importance to the tax strategy;

- risk management and governance arrangements in relation to UK taxation, including:
  - details on how business tax risk is identified, mitigated and managed—this should be tailored to the size and complexity of the business in question;
  - a high-level description of key roles and their responsibilities in the tax risk management process;
  - information on the systems and controls in place to manage tax risk;
  - details on the levels of oversight of the board and its involvement in risk management;
- seeking tax planning advice externally, and an explanation of why it might do so;
- dealings with HMRC; and
- in the case of a partnership, information on how the partnership as a whole manages its tax affairs.

The tax strategy should not include amounts of tax paid or commercially sensitive information, nor is there a requirement to include any evidence relating to the practical application of the tax strategy.

Who is responsible for the tax strategy?

Each entity is responsible for determining whether it meets the threshold and for publishing the tax strategy, unless it is part of a group in which case it is the responsibly of the head of the group.

An entity can publish a strategy on behalf of a group if it is registered in the UK.

How to publish the tax strategy

An entity or group must publish its tax strategy on the internet and it should be made available free of charge as either a standalone document or as part of a wider document, for example as part of an annual report. It must remain available to the public until the following year's tax strategy has been published and must be published each year, within 15 months of the last one being published.

HMRC has confirmed that, to the extent that a tax strategy remains the same as the previous year's strategy, the content may remain the same but the document should explicitly confirm that the strategy remains appropriate for the later year.

Consequences for non-compliance

If an entity or group fails to publish its tax strategy correctly and on time, meeting all of the requirements, then it is liable to receive a penalty of £7,500 for the first six months of non-compliance. A further penalty of £7,500 could arise six months after the failure to comply and a further £7,500 at the end of each additional month of continued failure to publish a tax strategy. A penalty may also be payable if the tax strategy does not remain accessible, free of charge, until publication of the next tax strategy. If an entity is part of a group, the head of the group will receive the penalty.

Modern Slavery Act reporting

In 2015, the UK government introduced a requirement for certain companies to make annual statements on action taken to eradicate slavery and human trafficking from their businesses and suppliers. Further information about the requirements and the consequences of non-compliance can be found in our alert of September 19, 2016.

Non-financial Reporting

Introduction

The Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016 ("**CPG Regulations**") were published in December 2016. The CPG Regulations implement aspects of the European Directive on disclosure of non-financial and diversity information (Directive 2014/95/EU) and the European Directive on annual financial statements, consolidated financial statements, and related reports of certain types of undertakings (Directive 2013/34/EU), and as a result amend Part 15 of the Companies Act 2006. The CPG Regulations came into force on December 26, 2016 and apply in relation to the financial years of companies and qualifying partnerships beginning on or after January 1, 2017.

To whom do the CPG Regulations apply?

The CPG Regulations introduce new reporting requirements regarding non-financial information for annual reports of public interest entities—banks, insurers, financial services firms and companies with shares admitted to trading on an EU regulated market—with over 500 employees on average during a financial year ("**PIEs**").

Where the PIE is the parent company of a group, it must disclose the information for the group as a whole.

The CPG Regulations also provide that there is no exemption from the requirement to produce group accounts under section 399 of the Companies Act 2006 for an undertaking which is part of a small group that has a PIE which is established in an EEA State as a member.

What are the requirements of the CPG Regulations?

The CPG Regulations require a PIE to include, in its annual strategic report, a description of the non-financial key performance indicators relevant to its business, and its policies and processes (and the outcome of the policies) and the accompanying risks related to the following matters:

- anti-corruption and bribery matters;
- environmental matters;
- social and employee-related matters;
- respect for human rights; and
- for companies listed on the Main Market of the London Stock Exchange, board diversity and how the diversity policy has been applied with regard to aspects such as educational and professional backgrounds,

together the "**non-financial matters**."

The description must contain information to the extent necessary for an understanding of the PIE's development, performance, and position and the impact of its activity relating to the non-financial matters. It should also contain a brief description of the PIE's business model, a description of the policies in place in relation to the non-financial matters and how it manages the accompanying risks.

If a PIE does not have policies relating to any of the non-financial matters, the CPG Regulations require it to provide a clear and reasoned explanation as to why that is the case.

Disclosure of information relating to pending developments or matters in the course of negotiation are not required if the directors consider that it would be seriously prejudicial to commercial interests, provided that such non-disclosure would not prevent a fair and balanced understanding of the PIE's development, performance or position.

Under the EU Directives, Member States also have the option to designate additional entities as PIEs, but to date the UK government has not exercised this.

Gender Pay Gap Reporting

As detailed in our alert of December 12, 2016, the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 ("**EA Regulations**") will come into force on April 6, 2017. Once in force, large private and voluntary sector employers will be required to analyse their gender pay gap and publish a first gender pay gap report no later than April 4, 2018.

The EA Regulations require each company within a group to report as a separate entity rather than on a group-wide basis. It is therefore possible that a group of companies will have only some of its entities covered by the EA Regulations, or that a whole group could fall outside of scope if it does not have any single entity that employs 250 or more employees. In addition, large groups may need to produce several reports, one for each separate entity that employs 250 or more employees.

In order to assist employers with their obligations under the EA Regulations, the Equalities Office and the Advisory, Conciliation and Arbitration Service have jointly issued an explanatory memorandum which provides, among other things, practical advice on how to draft a gender pay gap report and some ideas for closing the gender pay gap.

Payment Reporting Practices

Introduction

The Reporting on Payment Practices and Performance Regulations 2017 (which give effect to section 3 of the Small Business, Enterprise and Employment Act 2015) require large private companies and large quoted companies to report on payment practices, policies, and performance on a bi-annual basis. There is a similar obligation on large LLPs under The Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017. Such entities will be required to report on their standard payment terms, the time taken to pay invoices and whether interest was paid on late invoices. The information must then be uploaded to a digital, public platform hosted by the government. The regulations to implement this new requirement will come into force on April 6, 2017 and will apply to financial years starting on or after that date.

When businesses will be required to submit their first reports will depend on whether their financial year begins on or before April 6, 2017. Businesses with financial years beginning January 1 will be required to file their first report in July 2018. Businesses with financial years beginning on or after April 6 will be required to file their first report in winter 2017. To assist companies in complying with these provisions, the Department for Business, Energy and Industrial Strategy published guidance on January 31 on how these obligations will work in practice.

Which businesses need to report?

The provisions apply to businesses that exceeded, on both of their last two balance sheet dates, any two of the thresholds for qualifying as a medium-sized company under section 465(3) of the Companies Act 2006, namely:

- £36m annual turnover,
- £18m balance sheet total; and
- more than 250 employees on average.

together the "**qualifying businesses**."

As these thresholds are likely to change periodically, qualifying businesses have been advised to apply the reporting date thresholds retrospectively if the threshold changes between the balance sheet date and the reporting date.

A parent company or parent LLP must report if both the parent itself and the group it heads are large. This is a two-stage test: first, is the parent company or parent LLP large (using the criteria above)? If not, there is no duty to report on its own payment practices, policies, and performance. If it is large, the parent company or parent LLP must consider whether its group is also large (using the same criteria). Using current thresholds, if a group on each of its last two balance sheet dates exceeded at least two of the following three thresholds, the UK parent will fall within the scope of the reporting requirements, as will each company within the group that qualifies as large: a parent which exceeded (i) £43.2 million turnover; (ii) £21.6 million balance sheet total; and (iii) 250 employees will be required to report.

Newly incorporated companies that are qualifying businesses will not be required to report in their first financial year and will only need to report in their second financial year if, in their first financial year, they exceeded at least two of the thresholds.

What needs to be reported?

Qualifying businesses must prepare and publish information about their payment practices, policies and performance in relation to qualifying contracts for each six months of the qualifying business's financial year. Qualifying contracts are those which:

- are for goods and services between two (or more) businesses;
- have a significant connection with the UK, e.g., a contract performed in the UK or a contract to which a UK law would apply without the parties choosing a governing law or where one or both parties are established in the UK or carry on a relevant part of their business in the UK;
- are for goods, services or intangible property, including intellectual property; and
- are not for financial services.

Qualifying businesses may find it time-consuming to identify which contracts have a significant connection to the UK and may therefore need to seek advice on the point.

The information that needs to be published includes:

- narrative descriptions of the business' standard payment terms, how suppliers have been notified or consulted on changes and the process for resolving payment disputes;

- statistics on the average number of days taken to make payments in the reporting period and the percentage of payments made within the reporting period which were paid (i) in 30 days or fewer; (ii) between 31 and 60 days; (iii) in 61 days or longer; or (iv) beyond agreed terms; and
- statements about (i) whether suppliers are offered e-invoicing and supply chain finance; (ii) whether the business's practices and policies cover deducting sums from payments as a charge for remaining on a supplier's list and whether such deductions were made during the reporting period; and (iii) whether the business is a member of a voluntary payment code.

The guidance highlights that disputed invoices will be included in these average statistics, so qualifying businesses should evaluate how efficiently they resolve payment disputes.

Narrative descriptions about standard business terms may be provided by giving standard business terms or, where there are no standard terms, most frequently used payment terms for each type of qualifying contract.

Qualifying businesses will also need to report on unwritten contracts (as well as written contracts), including circumstances where payment is made but no invoice is issued.

Where should the information be reported?

The government is to provide a web service for this from April 2017 and the report must be published within 30 days of the end of the reporting period.

What are the consequences of non-compliance?

The business and every director (or designated members in the case of an LLP) each commit a criminal offence if they fail to publish a report within the specified filing period or if they knowingly or recklessly publish a report or information or make a related statement which is misleading, false, or deceptive. Being convicted of such an offence may result in a fine.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Corporate Governance practice:

James Halstead	+44 20 7067 2052	jhalstead@cov.com
Sunjay Malhotra	+44 20 7067 2386	smalhotra@cov.com