The latest tax and regulatory developments on the Capital Requirements Directive IV

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The most recent meeting of the Council of the European Union resulted in the general support of the latest political trilogue with the European Parliament of the "CRD IV" package, which focuses on capital requirements for banks and investment firms but also includes tax transparency requirements for banks.

Recent events

Council of the European Union – March 2013

On 5 March 2013, the Council of the European Union broadly endorsed the CRD IV proposal which is intended to be the EU law translation of the international agreement known as Basel III, which was approved by the G20 in general terms in November 2010. Technical issues are expected to be negotiated throughout March, with the goal of reaching agreement and signing a final deal at a closing trilogue at the end of the month. CRD IV represents another effort to avoid a recurrence of the recent financial crisis by addressing perceived regulatory deficiencies contributing to the impact and breadth of the crisis.

The CRD IV package, as it is known, includes provisions intended to amend and replace current capital requirements directives through: (1) a regulation creating prudential requirements which institutions must comply with and (2) a directive covering access to deposit-taking activities.

In addition to capital and liquidity requirements, the directive will now also have a strong focus on governance, including remuneration and transparency, which will be of significant relevance from the perspective of the tax function.

The proposed changes need to be seen in conjunction with proposed new tax regulation as suggested e.g. by the BEPS paper issued recently by the OECD as well as with increased public attention to whether companies pay "their fair share" in any jurisdiction in which they operate.

Governance and Transparency

Beginning in 2014, institutions must publically disclose:
- The number of employees and
- Net banking revenue.

Concurrently, profits, taxes paid and subsidies received must be disclosed by all European G-SIIs and O-SIIs to the Commission. This reporting will be implemented to enable the European supervisory authorities to support the Commission in the analysis of this data to determine the economic impact of such disclosures.

The term "net banking revenue" has not been defined by the directive. Thus, the regulator could make reference to local GAAP or international accounting standards or even provide its own reporting standard.

Whether the wording "taxes paid" implies that only cash taxes will be included in the reporting remains to be seen. There is also no indication if "above the line" taxes, such as irrecoverable VAT, will be subject to the reporting.

It is equally unclear, at present, whether the new rules will apply only to banks or to all entities regulated under CRD IV. Additionally, the draft remains silent on how often and in what format the reporting must occur.

Beginning in 2015, the profits, taxes paid, and subsidies received that must be reported to the Commission, will be required to be disclosed publically unless the Commission decides to delay, amend or eliminate this requirement. There is also a "sunset" clause within this disclosure requirement providing for the expiration of this provision if it has been addressed in alternative legislation.

Further Considerations

Clearly there is a continuing trend toward transparency within the financial services sector in an effort to address those areas which have been perceived to have been overlooked leading up to the financial crisis. This trend does not seem to be slowing down and should be tracked and addressed by financial institutions, especially those operating within Europe. PwC will continue to monitor developments in this space and release further guidance when more information becomes available. Given the timeline provided by the Commission, we would expect such clarity in the very near term.

Depending on the final rules, the compliance burden imposed on the affected entities must not be underestimated.

PwC contacts

If you would like further advice or information in relation to the issues outlined above, please call your local PwC contact or any of the individuals listed below:

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