Regulatory Briefing

Summary of key regulatory actions, initiatives and draft legislation affecting audit, capital markets, governance and tax

Implications for companies and their auditors

1 November 2016

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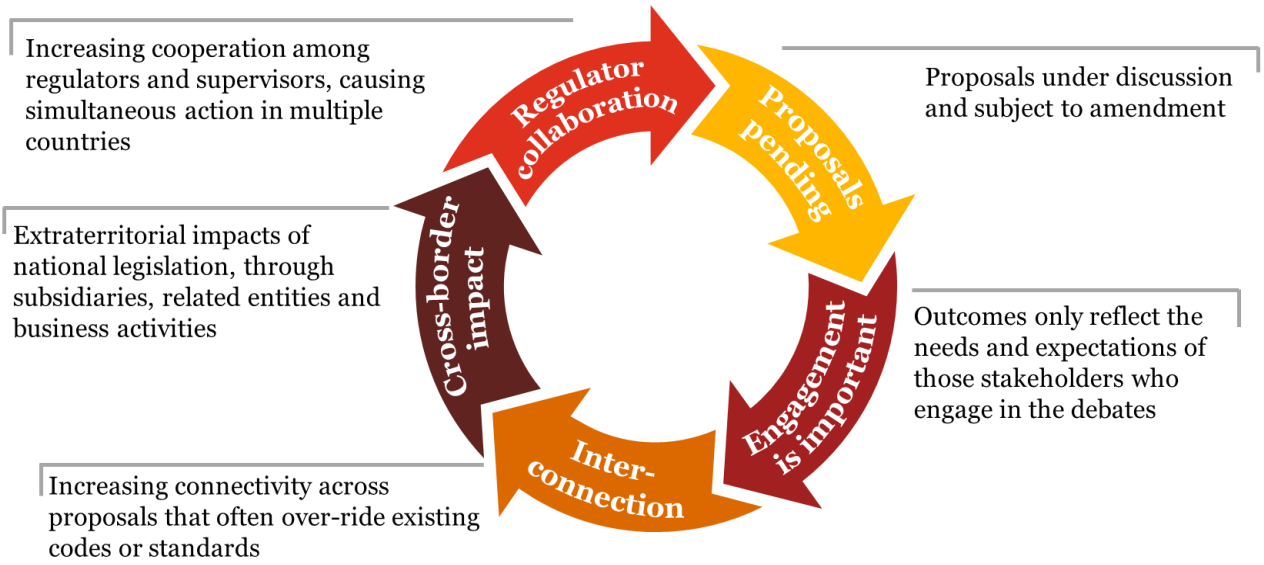
Introduction

Welcome to the October 2016 issue of the Regulatory Briefing. In it we outline key current developments affecting audit, capital markets, governance and tax. This includes some new developments as well as updates on on-going initiatives.

We recommend you consider the following as you are reading this Briefing:



Where developments could affect you, here are some things you can do:

- Respond directly to a consultation or proposal
- Meet with or write to the sponsors or lead organisations for the various initiatives
- Discuss proposals with other stakeholders

Refer to the Additional Information section of this Briefing for how to register comments and/or participate in the debates.

To learn more:

- You can access the previous issue of the Regulatory Briefing (July 2016) and additional points of view on audit and regulatory affairs here
- Visit http://www.pwc.com/regulatory-debate for points of view and other key information
- Further information is also available from your PwC relationship partner

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Audit

This section provides the latest developments in audit regulation affecting companies and their auditors.

The EU Audit Legislation became applicable on 17 June, 2016. Below we provide an update on recent developments in its implementation. We also provide a first look at the Committee of European Audit Oversight Bodies – a new framework established to support the implementation of the EU Audit Legislation.

In addition, we cover news from the global standard setters IAASB and IESBA and we report on two new developments from the Russian Ministry of Finance. We also look at key developments in Africa where Kenya and South Africa are considering new regulations on the mandatory rotation of audit firms.

European Union

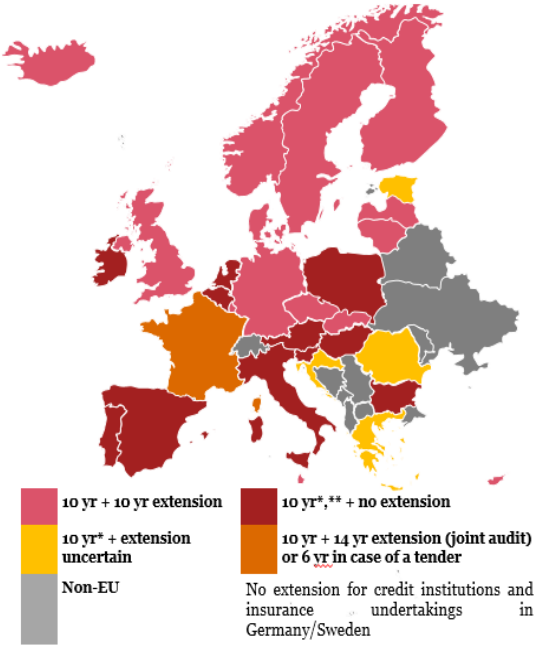
Update on the implementation of the EU Audit Legislation by Member States

On 17 June, 2016 the EU Audit Legislation became applicable. The rules apply to financial years starting on or after that date and are especially relevant for financial years starting on 1 January, 2017. Half of the 28 Member States have adopted national implementing legislation and the others are expected to do so before the end of 2016.

PwC commentary

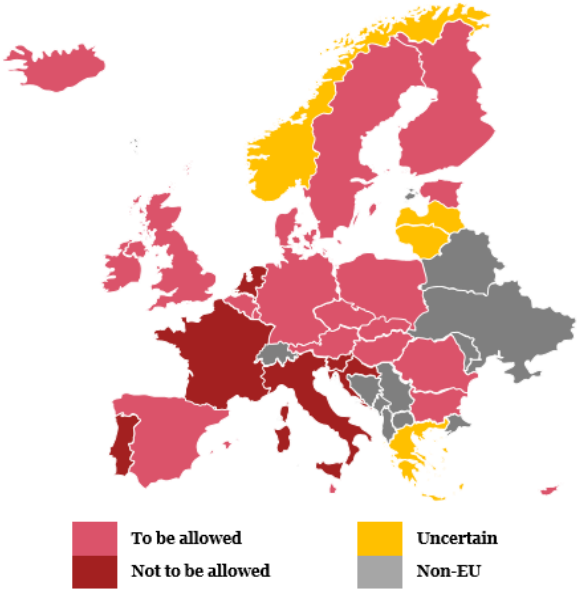
Our understanding of the positions which might be adopted by the Member States on key issues is illustrated below.

Potential outcome of Member State Options
Mandatory Firm Rotation



Caution: this preliminary analysis may be subject to change

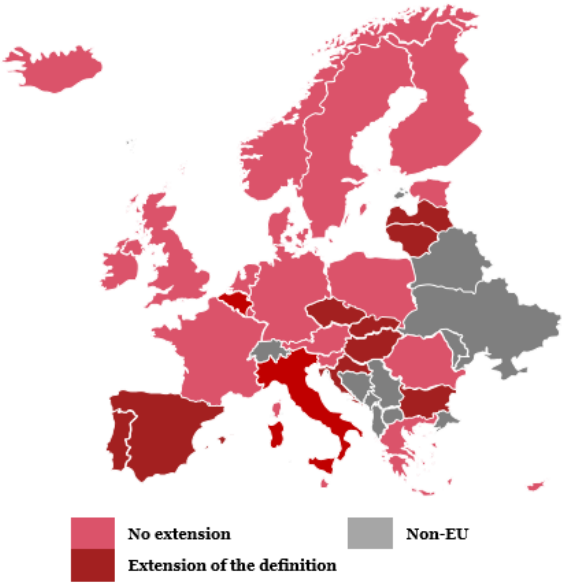
Potential outcome of Member State Options
Tax and valuation services



In the UK there will be limited circumstances where the derogation can be used. In Denmark, Cyprus and Slovakia, tax services will only be partially permissible. In Bulgaria only tax services are allowed. In Germany, wording has been added to prohibit aggressive tax planning advice.

Caution: this preliminary analysis may be subject to change

Potential outcome of Member State Options
Public interest entity definition



Caution: this preliminary analysis may be subject to change

Further guidance

Further guidance on implementation of the EU Audit Legislation is available, including:

- An implementation database being created by the European Contact Group (ECG), which is comprised of the six largest professional services networks. The database is designed to help companies and others understand the legislation, its interpretation and the approach adopted towards the options by each Member State. The ECG webpage also has a 'Frequently Asked Questions' document on the audit legislation.
- Guidance for audit committees published by the European Confederation of Directors Associations (ecoDa), together with PwC. The guidance focuses on new or updated corporate governance requirements resulting from the EU Audit Legislation.

New: Committee of European Audit Oversight Bodies (CEAOB) – New framework for national audit body cooperation begins work

The CEAOB, a framework for cooperation between national audit bodies at the EU level, held its inaugural meeting in July. The CEAOB supports effective and consistent application of the EU audit legislation, thereby strengthening EU-wide audit oversight.

Members of the CEAOB include representatives of the national audit oversight bodies of the EU

Member States and of the European Securities and Market Authority. Representatives of the national audit authorities of the European Economic Area also participate.

Global

New: International Ethics Standards Board for Accountants (IESBA) and International Auditing and Assurance Standards Board (IAASB) – New standards for responding to non-compliance with laws and regulations (NOCLAR) and amendments to ISA 250 by the IAASB

In July, IESBA released its final standard, "Responding to Non-Compliance with Laws and Regulations". The standard includes guidance for professional accountants (PA) on how to respond in situations where they become aware of or suspect NOCLAR (such as a suspected fraud). The standard applies to all categories of PAs, including auditors, other PAs in public practice, and PAs in organisations, including those in businesses, government, education, and the not-for-profit sector.

On 6 October, the IAASB released International Standard on Auditing (ISA) 250 (Revised), in response to new IESBA NOCLAR requirements. The revisions enable the ISA to continue to be applied effectively alongside the IESBA Code, and clarify and emphasise key aspects of the IESBA Code in the IAASB's Standards. The revised standard is effective for audits of financial statements for periods beginning on or after December 15, 2017. Amendments to the IAASB's International Standards for other services have a similar effective date. The IAASB has prepared an 'At a Glance document', explaining the main changes from the existing ISA.

PwC commentary

We support the NOCLAR standard, which clarifies the mandate and responsibilities of PAs.

International Auditing and Assurance Standards Board (IAASB) – Latest developments in global audit standard setting

Auditor reporting

The IAASB updated its New Auditor's Report page to include information from the Auditor Reporting Implementation Working Group. New materials include answers to frequently asked questions from investors, audit committees and auditors arising in the implementation of the new enhanced auditor's reports. The page also includes a publication on what audit committees and financial executives need to know about the more informative auditor's reports and the comparison between the ISAs and the PCAOB's re-proposal on the new auditor's report.

IAASB's 2017-18 work plan

The IAASB has been consulting on its work plan for 2017-18. Key priorities during this period include:

- Revising ISA 540 on accounting estimates so that it is fit for purpose when IFRS 9's expected loss model comes into effect. An exposure draft is expected by the end of 2016
- Progress on the audit quality projects, including the revision of ISQC 1, revision of ISA 600 on group audits and, in part in response to the Board's work on professional scepticism, a revision of ISA 500 on audit evidence
- Revising ISA 315 in response to feedback on the Clarified ISA Post-Implementation Review and regulatory inspection findings

IAASB seeks comment on two discussion papers

The IAASB is seeking comment on two papers addressing topics that could have a significant effect on audit and assurance engagements of the future.

"Supporting Credibility and Trust in Emerging Forms of External Reporting" seeks to facilitate discussion on what the IAASB should do in this area and where others can or need to play a role to support credibility and trust in broader corporate reporting, such as integrated reports.

"Exploring the Growing Use of Technology in the Audit, with a Focus on Data Analytics" provides insights on the opportunities and challenges with

the use of data analytics in the audit. The IAASB is seeking stakeholder input and perspectives on whether the working group has identified all relevant considerations.

Next steps

Comments are due on the first of these by 15 December, 2016, and on the other by 15 February, 2016.

Kenya

New: Central Bank of Kenya (CBK) – Planned tenure limits for external auditors of banks

The CBK announced plans to introduce a three-year tenure limit for external auditors of banks. The limitation is part of the regulator's attempts to enhance corporate governance in the financial sector. The CBK hopes the measure will improve audit quality and independence.

Nigeria

Adopted: Financial Reporting Council (FRCN) – release of revisions to the National Code of Corporate Governance

On 17 October, the FRCN released its revisions to the National Code of Corporate Governance for the private sector. Application of the code is mandatory and immediate from 17 October 2016.

The Code introduces rotation on a 10 year basis with joint audit, and includes a 7 year cooling off period. The requirements apply to listed, unlisted public and private companies and significant PIEs (not covered by the other categories). Under a joint audit at least one auditor must be an indigenous firm. For companies with auditors that have been in place for more than ten years rotation must take place at the end their current financial year.

Russia

Ministry of Finance (MoF)

New: Draft revisions to both the Audit Law and Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Law

The MoF published draft proposals to revise the Audit Law and the AML/CTF Law. The revisions would require auditors, among others, to inform the Federal Financial Monitoring Service about any "suspicious" transaction which may be connected with money-laundering or terrorism financing activities. The notification must occur no later than three days after the "suspicious" transaction is identified.

Next steps

The MoF has not yet announced its timetable for further action.

PwC commentary

Many countries require auditors to report suspected illegal acts to regulators. However, the vague definition in the current draft proposals of what makes a transaction "suspicious" means it is difficult to determine if a transaction should be reported to the regulator. This is complicated when there is insufficient time (three days) to investigate or discuss the transaction with management.

New: Draft decree on new requirements for audit tenders of state-owned and municipal entities

The MoF released a draft decree that will prohibit an audit firm with any foreign participation in its ownership from responding to contract tenders by Russian entities connected with the national security and defence industry. The proposal also introduces new documents that an auditor must complete when responding to a tender from any state-owned or municipal entity.

Singapore

New: Monetary Authority of Singapore (MAS) – Consultation paper on replacing mandatory firm rotation for banks

In September the MAS issued a consultation paper recommending that mandatory audit tendering every 10 years replace the current five-year mandatory audit firm rotation (MFR) requirement for banks (which has been suspended since 2008).

PwC commentary

We do not support either MFR or mandatory re-tendering of auditor appointments as a means to enhance auditor independence or audit quality. We believe that effective audit committees and robust oversight by an independent audit regulator - both of which exist in Singapore - are more effective ways to enhance audit quality. We also support increased transparency between auditors and audit committees, and between banks and the public (including the additional disclosures that will be made in the new long form audit report).

South Africa

New: Independent Regulatory Board for Auditors (IRBA) – Intent to propose mandatory audit firm rotation

On 26 October IRBA released the final draft of its proposals for introducing MFR with comments requested by 20 January 2017.

IRBA is proposing rotation on a ten years basis, with a five years cooling off period, which will take effect from 1 April 2023. The requirements will affect companies listed on the Johannesburg Stock Exchange. For companies operating a joint audit the requirements will allow an initial extension of two years for one of the auditors to ensure that the change of all auditors does not occur at the same time. If companies adopt a joint audit, they will have the ability to adjust an auditor's term - within the maximum ten year limit - to allow for any future change in auditors.

PwC commentary

PwC welcomes IRBA's the consultation. We acknowledge the importance of reviewing auditor tenure in an appropriate way, which balances the risks of over-familiarity from long tenure against the lack of knowledge of the company from too frequent change.

The business community in South Africa has raised significant concerns about the proposals, with comments from the Johannesburg Stock Exchange and Professor Mervyn King (Chair of the King Committee on Corporate Governance) arguing that imposing term limits are inappropriate in the South African environment. We agree with their view that the audit committee should be responsible for advising the Board on the appointment of the auditor.

Capital Markets

In this section, we cover some of the latest regulatory developments affecting capital markets, particularly listed entities.

Some important updates to ongoing initiatives in the EU include:

- The European Council (EC) accelerating the execution of the Capital Markets Union Action Plan
- The European Commission and European Parliament's progress reviewing the Prospectus Directive

Elsewhere, the Ministry of Corporate Affairs in India is developing rules and regulations stemming from the Insolvency and Bankruptcy Code 2016 and the UK's Financial Reporting Council is encouraging dialogue between companies and auditors to prepare for post-Brexit financial reporting.

European Union

European Commission (EC) - Latest developments on EU capital markets regulation (Capital Markets Union (CMU), review of Prospectus Directive)

New: EC seeks acceleration of CMU Action Plan

The EC asked the Council and the European Parliament (EP) to accelerate the adoption of the first measures proposed under the CMU Action Plan: the securitisation package, the review of the Prospectus Directive and the revision of the European Venture Capital Fund (EuVECA) and European Social Entrepreneurship Fund (EuSEF) regulations.

In its communication, "CMU – Accelerated reform", the EC announced it will soon present a proposal on business restructuring and second chance. The objective of the proposals is to facilitate restructuring of viable businesses and enable entrepreneurs to make a fresh start.

In addition, the EC proposed to extend the range of managers eligible to market and manage EuVECA and EuSEF funds to include larger fund managers, i.e., those with assets under management of more than €500 million. They can provide economies of scale and trusted brands, which offer benefits for investors.

Review of Prospectus Directive

The European Council and the EP both adopted their respective positions on the Prospectus Directive review. Trilogue negotiations can now start between the Council, the EP and the EC to reach an agreement.

This is the latest development in the EC's proposal to change the original directive into a regulation. The proposed changes are intended to lower existing barriers to entry to European capital markets by clarifying the circumstances when a prospectus is needed, the information required to be included in it and by streamlining the process for approval of prospectuses.

Brexit update

In October the UK Prime Minister confirmed that the UK Government will trigger Article 50, the mechanism for leaving the EU, by March 2017.

When the UK invokes Article 50 it will start a two year negotiation process between the UK and the other 27 members of the EU. These negotiations will focus on the rights of EU citizens, the status and pensions of Britons working in EU institutions and settling terms of ongoing European Investment

Bank and EU structural funds. It only 'gives consideration' to the future trading relationship between the UK and the EU. The exact terms of this relationship will be settled after the exit negotiations are completed.

Next steps

When negotiations begin, the Council of Ministers will represent the other 27 members of the EU and will focus on the nature of the new relationship between the EU and the UK. The European Commission's Brexit Task Force is currently working on many of the technical details of how the UK can be extracted from the Union. The UK Government is in the process of formulating its negotiating position. It is expected that the UK Government will introduce a 'Great Repeal Bill', which would come into effect on the first day of Brexit, repeal the European Communities Act, and transpose much of the existing EU legislation into UK domestic law. This will help provide some legal and regulatory certainty for EU businesses trading with the UK and vice versa.

PwC commentary

There has been a drift towards a 'hard' Brexit both in the UK Government's remarks but also by some EU leaders – for example Council President Tusk, at a conference at the European Policy Centre in Brussels, said "'Hard Brexit' or 'no Brexit', the key task during the withdrawal negotiations will be to protect the interests of the EU and of each of the 27 countries".

However, there are still many political unknowns which make it difficult to predict the future of the new EU-UK trading relationship. Businesses who wish to undertake some scenario planning, might want to focus on the areas where there is most likely to be change. For example, changes to the free movement of people seem highly likely, impacting talent and recruitment strategies. The VAT regime will also change and the imposition of tariffs on goods will necessitate a change to supply chain systems.

India

New: Ministry of Corporate Affairs (MCA) – Developing regulations required by the Insolvency and Bankruptcy Code 2016

In August both houses of the Indian Parliament passed the Insolvency and Bankruptcy Code 2016 (the Code). As a result, the MCA has set up several working groups to develop the regulations required to support implementation of the new Code, including rules on insolvency resolution, liquidation procedures and other procedural aspects relating to insolvency resolution professionals.

Next steps

The MCA plans the new regulations and rules to be adopted by 2017 when the Code will come into force.

United Kingdom

New: Financial Reporting Council (FRC) – Guidance for half-year and annual financial reports

In response to the UK referendum on EU membership, the FRC published guidance providing a list of matters for directors to consider when preparing upcoming interim and annual financial reports including whether:

- The referendum vote gives rise to solvency, liquidity or other risks that may threaten long-term viability of the company
- The going concern basis of accounting is appropriate and whether disclosures of material uncertainties are needed
- Additional disclosures are necessary to meet the requirement for financial statements to give a true and fair view

The matters are high-level and designed to encourage companies to begin conversations with their investors and auditors about how "Brexit" may affect financial disclosures.

PwC commentary

We support the FRC's effort to encourage dialogue between directors, investors and auditors. Not all entities will be affected by Brexit in the same way, so beginning a dialogue now will help ensure clarity when changes take effect.

Governance

Looking at recent developments covered below, one trend stands out. More regulators, exchanges and other organisations are expanding their definitions of "stakeholder":

- Brazil and Taiwan, exchanges have updated stewardship codes to emphasise the importance of institutional investors in the marketplace
- New reports from the UK Financial Reporting Council (FRC) and a coalition of U.S. business leaders and investors also support broadening the scope of governance to include a wider variety of stakeholders.

By including more people in important dialogues, these efforts are likely to enhance communications and increase confidence and stability across capital markets.

Other topics covered in this issue include:

- Board composition and independence – Malaysia's new corporate governance standards for financial institutions include strong language on independence of directors, including a director tenure period
- Mandatory rotation of audit firms (MFR) – this remains a key trend as some regulators see MFR as a viable method to achieve policy goals. Recent developments in Kenya and South Africa are covered in the "Audit" section

Global

New: Financial Stability Board (FSB) – Peer review of the G20/OECD Principles of Corporate Governance

The FSB, an international financial monitoring body, launched a peer review of its members' implementation and application of the G20/OECD Principles. The review will identify effective practices as well as implementation gaps.

Next steps

The FSB plans to publish the report in early 2017.

Brazil

New: Associação de Investidores no Mercado de Capitais (AMEC) – Launch of stewardship code

AMEC, the association of institutional investors in Brazil's stock market, produced a draft version of a stewardship code. The draft code calls on institutional investors to meet seven principles by:

- Implementing a stewardship program
- Implementing mechanisms to manage conflicts of interest
- Taking environmental, social and governance issues into account in their investment processes and stewardship activities
- Monitoring the issuers of invested securities
- Being active and diligent in the exercise of voting rights
- Establishing collective engagement criteria
- Being transparent as to their stewardship activities

Next steps

The final version of the code will be introduced at the AMEC Investor Forum in late October.

Japan

Financial Services Agency (FSA) – Working Group on Corporate Disclosure publishes final report, recommendations

The FSA Working Group on Corporate Disclosure produced its "Promoting Constructive Dialogue" report which recommends new methods for Japanese companies to disclose corporate information and encourages communications with stakeholders. While the report emphasises the overall importance of disclosures to enhancing company-investor dialogue, the recommendations are more specific, calling for an end to duplicative disclosure forms and for companies to increase efforts to involve shareholders in annual general meetings.

Next steps

The working group called for the FSA and companies to enact its recommendations.

PwC commentary

We welcome the constructive discussions in Japan. Efforts to improve disclosure of information by companies to stakeholders can lead to a better aligning of interests and positive results for all parties. In addition, we support removing barriers to shareholder participation in annual general meetings.

Malaysia

Adopted: Bank Negara Malaysia (BNM) – Changes to corporate governance standards in financial institutions

In August, the BNM issued new corporate governance standards for Malaysian financial institutions. The new standards are effective immediately. Changes in the standards include:

- Strengthened requirements on board composition, including a requirement for boards to have a majority of independent directors
- Enhanced expectations for the board and its committees, including a requirement to approve and maintain credible recovery and resolution plans under conditions of stress
- An expected nine-year tenure limit for independent directors
- Requirements for financial institutions to adopt a code of ethics that promotes ethical, prudent and professional behaviour, supported by a transparent whistleblowing policy
- Expanded requirements on remuneration arrangements which promote a sound risk culture and are aligned with prudent risk-taking
- Strengthened expectations for effective group-wide governance arrangements.

Netherlands

New: Monitoring Commissie Corporate Governance (MCCG) – Proposal for applicability of corporate governance code to one-tier boards

The MCCG published a consultation document to help develop guidelines on how the Dutch Corporate Governance Code can be applied by companies with one-tier boards. Currently, the code is based on two-tier board models. Although the majority of Dutch companies are organised in a two-tier board structure, increasing numbers are opting for a one-tier board.

The consultation paper included "Principles and Best-Practice Provisions", based on the existing Code, and accompanying guidance amended for one-tier boards. The MCCG sought input on the applicability of the Principles and the usefulness of the guidance by companies with one-tier boards. The consultation closed on 28 September 2016.

Philippines

New: Board of Accountancy (BOA) – Proposed revisions to the Philippine Accountancy Law

In August, the BOA proposed several amendments to the Philippine Accountancy Law (Republic Act 9298). The proposals are aimed at updating the 2004 law. Proposed revisions include:

- Requiring at least one licensed accountant as either a chairperson or member of an audit committee of listed companies
- Creating the Accountancy Regulatory Office, a new office responsible for audit quality oversight

- Mandating accreditation of licensed accountants in public practice sector, licensed accountants in commerce and industry, education and government sectors with BOA

PwC commentary

We support the proposals above, particularly those aimed at strengthening audit committee composition and creating a body responsible for audit quality oversight. Both of these provisions will enhance corporate governance in the Philippines.

Russia

New: National Agency of Strategic Initiatives (NASI) – Corporate governance road map outlines developments through 2018

In June, NASI, a non-profit organisation established by the Russian government, approved the "Road Map of Corporate Governance Development in Russia". The road map outlines corporate governance milestones through 2018 and includes information about the development of regulations and required amendments to existing laws. The plan is intended to improve legislative protections for minority shareholders in Russia.

South Africa

Adopted: The Institute of Directors in Southern Africa (IoDSA) – release of the King IV Report on Corporate Governance for South Africa, 2016

The IoDSA released the King IV Report on Corporate Governance for South Africa, 2016 (King IV) on 1 November 2016.

Disclosure on the application of King IV is effective for financial years starting on or after 1 April 2017. The IoDSA has encouraged immediate transition to the new requirements. King IV replaces King III in its entirety.

King IV is a set of voluntary principles and leading practices, which has been drafted to apply to all organisations, regardless of their form of incorporation. It now refers to "organisations" rather than "companies"; "governing bodies" rather than "boards"; and "those charged with governance duties" rather than "directors".

The Code now focuses on outcomes, articulating the benefits of good corporate governance, with a strong emphasis on transparency.

PwC commentary

We support King IV as it retains many of the guiding principles of its predecessors but now seeks to instil a greater level of integrated thinking in board decisions, asking governing bodies to consider not just financial gain, but the wider context, including social and environmental considerations.

Taiwan

New: Taiwan Stock Exchange (TWSE) – Stewardship principles published

The TWSE published "Stewardship Principles for Institutional Investors" with the goal of enhancing long-term value for both institutional investors and capital providers. The TWSE is encouraging institutional investors to publicly endorse the Principles and apply them on a "comply or explain" basis.

The document is based on six stewardship principles:

- Establish and disclose stewardship policies
- Establish and disclose policies on managing conflicts of interest
- Regularly monitor investee companies
- Maintain an appropriate dialogue and interaction with investee companies
- Establish clear voting policies and disclose voting results
- Periodically disclose to clients or beneficiaries about the status of fulfilment of stewardship responsibilities

PwC commentary

The stewardship code is a positive step for corporate governance in Taiwan. The new code will improve engagement between investors and boards and lead to an increase in market confidence and stability.

United Kingdom

New: Financial Reporting Council (FRC) – Report issued on "Corporate Culture and the Role of Boards"

In July, the FRC published the report "Corporate Culture and the Role of Boards". The report addresses how boards and executive management can steer corporate behaviour to create a culture that will sustain good performance. It defines corporate culture as the combination of values, attitudes and behaviours demonstrated by a company in its operations and relations with its stakeholders. The report emphasises that boards must have responsibility for culture and must exercise oversight in this area. It also reiterates the link between strong governance and corporate culture.

Next steps

The FRC will update the 2011 "Guidance on Board Effectiveness" and continue to identify and share good practice.

PwC commentary

The FRC's report reflects an emerging trend, as regulators and policy makers seek to broaden the scope of governance from its traditional focus on companies and shareholders to multiple stakeholders and wider society. We believe that a continued debate about business conduct and culture is critical to developing the future of corporate governance.

New: Executive Remuneration Working Group (ERWG) – Final report on remuneration published

The ERWG, established by the UK's Investment Association, published its final report on executive remuneration in July. The report recommends behavioural and structural changes to improve the remuneration system and to allow more flexibility for companies to choose an appropriate remuneration structure. The ERWG also hopes to address the breakdown of trust between shareholders and companies on remuneration issues. The working group's recommendations are based on five key themes:

- Increasing flexibility
- Strengthening remuneration committees and their accountability
- Improving shareholder engagement
- Increasing transparency around target setting and use of discretion
- Addressing the levels of executive pay and setting parameters on how alternative structures might operate to gain market trust.

United States

New: Business leaders and investors publish "Commonsense Principles of Corporate Governance"

In July, a broad group of U.S. business leaders and investors published the "Commonsense Principles of Corporate Governance". The principles emphasise that public companies should commit to a long-term approach in governance, management and stewardship while also encouraging greater engagement between companies and investors.

In addition to supporting long-term planning, the principles advocate:

- Diversity in board composition
- Independent board decision-making processes
- Enhanced engagement between companies and institutional investors
- Responsible use of non-GAAP reporting measures

PwC commentary

Stakeholders are pressuring owners, boards and directors to act in a way that has a sustainable, long-term positive impact. In response, business leaders are recognising their company's new role as a "global corporate citizen" and how this will impact future development and investment. We support the view that reliable corporate reporting and enhanced engagement between companies and investors are vital to increased confidence in capital markets.

Tax

This section focuses on multinational tax developments. It has updates on regional initiatives in the EU and global initiatives by the OECD and other entities. It also covers current activities in Australia, China, Georgia, India and the UK.

Major global initiatives include the OECD's base erosion and profit shifting (BEPS) measures, a report on capacity building from the Platform for Collaboration on Tax and the convergence of numerous national tax regulatory bodies toward the Common Reporting Standard. There is also an update from the Business and Industry Advisory Council's (BIAC) recent collaborative work with China's State Administration on Tax (SAT) on the "Thousand Companies Project".

In addition, a new consultation paper from HM Revenue and Customs in the UK proposes penalties for enablers of tax avoidance schemes – the most recent effort by the government to respond to changing tax avoidance behaviours.

Australia

New: Australian Tax Office (ATO) – Voluntary Tax Transparency Code (TTC) goes live

In August, the ATO published details regarding the voluntary TTC, a set of principles and minimum standards to guide medium and large businesses on public disclosure of tax information. The TTC is designed to encourage greater transparency within the corporate sector, particularly by multinationals, and to enhance the public's understanding of the corporate sector's compliance with Australian tax laws. After preparing a TTC report, companies need to notify the ATO, which will facilitate the centralised list of published reports.

Next steps

Companies with a 30 June year end are encouraged to adopt the TTC for the year ended 30 June 2016. There is no prescribed timing for the release of annual TTC reports.

PwC commentary

This development illustrates the global trend toward more tax transparency, on a required or voluntary basis. We believe this increased transparency is useful for users of company reporting. Some large businesses already report this type of information based on other legal requirements (e.g. an Extractive Industries Transparency Initiative report or an EU Tax Directive report). However, for others this would be a significant increase in public transparency and would likely lead to an increase in compliance costs.

China

New: State Administration on Tax (SAT) – "Thousand companies project" launches with Business and Industry Advisory Council (BIAC) input

In July, China's SAT and the BIAC met to discuss the SAT's "Thousand Companies Project". The project seeks to collect company financial and accounting data from around 1,000 of the largest businesses in China. This is part of the SAT's new risk assessment process. BIAC offered its experience, drawn from its close involvement in the OECD's BEPS process, to help the SAT extract the most useful information in the least burdensome way for businesses.

Conclusions from the collaboration included:

- The deadline for delivery of information has been extended to the end of 2016
- Information requested has been limited to financial and accounting data at the "report" level, rather than transaction level
- The taxpayer has a choice between using SAT developed software or using a SAT template to develop their own software

- Information collected will be held strictly confidential within SAT

BIAC and SAT acknowledged that the best way to prevent aggressive tax avoidance is through open and frequent dialogue between taxpayers and SAT. Both sides will explore further ways to deepen a programme of "cooperative compliance" in China.

PwC commentary

Businesses need to be prepared for China's increasing focus on data mining and data analysis. Besides identifying particular issues with taxpayers in scope, this project's 'sample' information will probably help the SAT determine the appropriate parameters and thresholds for their risk-based approach going forward.

European Union

New: European Commission (EC) – Ireland granted undue tax benefits to Apple

As a result of the EC's in-depth state aid investigation, the Competition Directorate has found that two tax rulings issued by Ireland to Apple have substantially and artificially lowered the company's taxes paid in Ireland since 1991. The EU alleges the conduct was illegal under state aid rules, because it allowed Apple to pay substantially less tax than other businesses. Ireland must now recover the illegal aid from Apple, worth up to € 13 billion. Apple and Ireland are filing appeals but Ireland is bound to recover the state aid in dispute before those appeals can proceed.

Next steps

The appeals process on the ruling may take years to be resolved.

PwC commentary

Currently the only official information available is the EC's press release. We must wait for the publication of the non-confidential version of the decision in order to see the detailed arguments behind their conclusions. However, a number of points in the press release suggest that the decision may be important for others entities besides Apple.

The EC's decision to question an agreement concluded between governments and taxpayers has created considerable uncertainty. This uncertainty will continue until we see the final judgment from the Court of Justice of the European Union.

EC – re-launch of proposals for the Common Consolidated Corporate Tax Base (CCCTB)

On 25 October, the EC re-launched its proposals for the CCCTB. The aim to make it easier and cheaper to do business in the EU and to create a level-playing field for multinationals in Europe by reducing possible routes to tax avoidance. Two new proposals are included on dispute resolution on double taxation in the EU and on bolstering existing anti-abuse rules.

The CCCTB has been split into two stages involving agreement of the common base and then consolidation across the Member States

The new EC proposals would:

- Be mandatory for large multinational groups (companies with global revenues exceeding EUR 750 million a year)
- Tackle loopholes currently associated with profit-shifting for tax purposes
- Encourage companies to finance their activities through equity and from the markets rather than through debt
- Support innovation through tax incentives for Research and Development (R&D) activities which are linked to real economic activity

Georgia

Adopted: Parliament – New system of income tax on business adopted

From January 2017, Georgia will effectively replace its corporate income tax for many companies with a monthly distributed profits tax (at the same general rate of 15%). Undistributed profits, reinvested or retained, will not be subject to such income taxation. The intention is to stimulate growth through the incentive for companies to retain and invest profit. The Finance Ministry estimates a loss in revenue of nearly 60% in the first year of operation and nearly 30-40% the following year before returning to 'normal' levels. The Government appears to be basing some of its conclusions about the impact of the changes on a similar policy move made by Estonia in 2000.

Next steps

Banks, insurance companies, microfinance institutions and pawn-broking businesses have until 2019 to adapt when the rules apply to them.

Global

Organisation for Economic Co-Operation and Development (OECD) – Additional BEPS publications

Part of the second stage of the OECD's BEPS project involves clarification of outstanding issues. For developing countries, this includes the creation and provision of practical toolkits that address the top priority issues they have identified.

Current position

To provide clarification on outstanding issues, discussion drafts were available on:

- the design and operation of the group ratio rule for interest deductions and other financial payments
- conforming changes to Chapter IX of the OECD Transfer Pricing Guidelines on business restructurings
- attribution of profits to permanent establishments
- revised guidance on a profit split as a transfer pricing method
- approaches to address BEPS involving interest in the banking and insurance sectors
- branch mismatch structures as part of work to neutralise the effects of hybrid mismatch arrangements

Summaries of the progress on each BEPS Action item and the consolidated response documents are available on the BEPS-specific web pages. The OECD also maintains links to its BEPS responses listed chronologically.

New: Platform for Collaboration on Tax

Working jointly as part of a new Platform for Collaboration on Tax, the OECD, United Nations, World Bank Group and International Monetary Fund submitted a report on capacity building to the G20 Finance Minister's meeting in July. The recommendations include ways to help effective implementation of technical assistance programmes and how countries can contribute funding for tax projects and direct technical assistance.

Contributing organisations drew on their individual experiences in delivering technical advice and their interactions with other providers of technical assistance, development partners, and country governments. They further benefitted from a public request for feedback on draft recommendations which attracted responses from governments, businesses, civil society and individuals.

Next steps

The G20 Finance Ministers and Central Bank Governors acknowledged the report at their July meeting in Chengdu, China, and asked for a progress update by mid-2017.

New: Voluntary disclosures and amnesties

From 2018 international tax transparency will increase as a result of the OECD's Common Reporting Standard (CRS). Over 100 countries will begin to share bank account information with each other. This provides a strong incentive for taxpayers to consider whether tax affairs have been mis-declared. To enhance this incentive, a number of countries have initiated forms of voluntary disclosure often combined with a tax amnesty, or reduced penalties, for taxpayers disclosing unpaid or underpaid tax.

Current positions

In September 2016 UK's HM Revenue and Customs (HMRC) launched a new "Worldwide Disclosure Facility". Although this new facility will not offer any beneficial settlement terms in the way previous facilities did, it offers a streamlined and efficient way for users to make a disclosure to HMRC. At the same time, the UK is consulting on two new concepts to encourage individuals (and businesses) to undertake a review of their historic taxation position by 30 September, 2018:

- A statutory 'requirement to correct' any historic tax issues connected to offshore interests from 6 April, 2017
- A "failure to correct" offence designed to incentivise taxpayers to use the RTC window to deal with any historic errors and to penalise those who do not

Among the other countries with voluntary disclosure facilities, the take-up by taxpayers has been varied.

- A Swiss Parliamentary finance committee report suggests its tax amnesty programme has brought in CHF 24.7 billion ($25.9bn) owed to local, cantonal and federal coffers as a result of 22,000 disclosures, exceeding expectations
- However, the Indonesian Ministry of Finance, has informed that half way into an eight-month tax amnesty programme it had collected only 757 billion rupiah ($57.61m), just 0.5% of what the government hopes to collect by the end of December

India

Adopted: Parliament – New indirect tax regime

The Indian Parliament has introduced a Goods and Services Tax (GST) which is broadly a form of Value Added Tax (VAT). This is a significant development which will affect all businesses with interests in India or who trade with India. It will replace a proliferation of individual state sales-based taxes which can often have an overlapping or cumulative effect. The central Indian government has agreed to compensate the states for the first five years.

PwC commentary

We understand that the government is likely to push for implementation by 1 April, 2017. Considering the limited time available and the potential impact of GST on businesses (for example, on product pricing, working capital, information system, supply chain, contractual arrangements, etc.), it is vital to understand how this policy change affects companies and their tax organisation/processes.

United Kingdom

New: HM Revenue and Customs (HMRC) – Strengthening Tax Avoidance Sanctions & Deterrents

In August a consultation was published on proposals to penalise accountants, tax planners and others (so called 'enabler of tax avoidance'), who provide services in the supply chain of tax avoidance arrangements. The proposals suggest a fine of up to 100% of the tax underpaid by the scheme's user(s) to be imposed on enablers. HMRC completed a consultation with stakeholders in October.

Next steps

The results of the consultation will help to set objectives and identify options in the first of the five stage consultation process laid out by the UK's Tax Consultation Framework.

PwC commentary

We welcome the consultation. A poorly directed measure would risk burdening the economy and HMRC alike, as taxpayers' advisors seek clarification from HMRC on areas of uncertainty in the tax system before they are able to proceed with commercial transactions. Any new measures that are introduced must be appropriately targeted and proportionate so that taxpayers can continue to receive independent professional advice.

New: Parliament – HMRC given power to require companies to publish country-by-country tax information

The Finance Act 2016 includes a provision that could result in companies being required to publish a "country-by-country report" showing their profits, taxes paid and other financial information for the countries in which they operate. This is the information which the company has to supply to HMRC as a result of BEPS to potentially be shared with tax administrations in other countries. The requirement takes the form of an addition to the other information which the company will have to make public in relation to its group tax strategy under the Finance Act.

Next steps

The requirement will not come into effect unless a specific regulation is adopted. The government has given a commitment not to introduce such a regulation without international consensus (without defining what that means). If such consensus was reached then regulations could be introduced relatively quickly, without waiting for the subsequent Finance Bill.

PwC commentary

There are countries that are strongly against making country-by-country BEPS information public. It is uncertain whether the UK would consider whether there was sufficient international consensus without the inclusion of the US, for example.

Additional Information

PwC Points of View

PwC commentaries on a number of key proposals and major areas of debate raised by commentators and stakeholders, and possible alternative proposals are available in more detail at: www.pwc.com/regulatory-debate

PwC EU audit legislation Fact Sheets

PwC has produced a series of 'Fact Sheets' on the key measures included in the legislation which are available at: www.pwc.com/regulatory-debate and include:

- **Mandatory audit firm rotation** for PIEs
- New requirements for **audit committees** (or their equivalent) relating to their oversight of the performance of the audit
- Additional **restrictions** on the provision of **non-audit services** by the statutory auditor to their PIE audit clients
- New requirements regarding **reporting by the statutory auditor**
- The definition of **Public Interest Entities** (PIEs)

EU audit legislation Briefings

PwC has also produced a Briefing Note on potential, unintended, extra-territorial impacts of the EU audit legislation:

- Consideration of potential unintended **extraterritorial impacts**

You may also find the material produced by the European Federation of Accountants (FEE) on the implementation of the EU audit legislation of value.

Corporate governance guidance

PwC and ecoDa together produced guidance for audit committees regarding new or updated corporate governance requirements resulting from the EU Audit Legislation.

PwC International Tax News

PwC has produced a series of international tax newsletters available at: https://www.pwc.com/gx/en/services/tax/newsletters/international-tax-services.html

How to participate in the debates?

The best way to provide input on implementation of the EU audit legislation is to contact an appropriate official of a Member State government or the national audit regulator.

Contacts

If you would like more information on any of the initiatives described in this briefing, please contact your PwC relationship partner.

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