Real Estate Tax Services News

Keeping you informed

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The EU Corporate Sustainability Reporting Directive and the tax function

In brief

On 5 January 2023, the EU Corporate Sustainability Reporting Directive (CSRD) entered into force. The CSRD requires companies to disclose non-financial information of the company's development, performance and position, but also the impact of the undertaking's activities on ESG matters. More importantly, due to the CSRD's interaction with several other directives and initiatives, the new sustainable reporting requirements have a clear impact on your tax function.

Is your company in scope of the CSRD?

The CSRD is broad in scope and applies to all large companies and listed companies (except listed micro-enterprises). Therefore, even non-EU groups with activities in the EU may potentially be subject to the CSRD. To see if your company falls within the scope of the CSRD reporting requirements, please check the figure 1 below.

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Figure 1: You fall in scope of the CSRD, if you are a(n):

EU Undertaking: Single entity

That meets 2 of the following criteria

- >EUR20 million on balance sheet
- >EUR40 million net turnover
- > 250 employees

1) In 2025 on FY2024 *Undertakings in scope of the NFRI*

2) In 2026 on FY2025 *Large undertakings new in scope of the CSRD*

3) In 2027 on FY2026 *Listed SMEs*

EU Undertaking: Group

That meets 2 of the following criteria

- >EUR20 million on balance sheet
- >EUR40 million net turnover
- > 250 employees

1) In 2025 on FY2024 *Undertakings in scope of the NFRI*

2) In 2026 on FY2025 *Large undertakings new in scope of the CSRD*

3) In 2027 on FY2026 *Listed SMEs*

Non-EU group

>EUR150 million net turnover in the EU for each of the last two consecutive years

+

Subsidiary in the EU that qualifies as large company

OR

Branch in the EU with >EUR40 million net turnover in the preceding financial year

In 2029 on FY2028

Non-EU issuer

An 'issuer' is understood to be a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented

1) In 2025 on FY2024 *Large issuers with >500 employees*

2) In 2026 on FY2025 *Other large issuers*

3) In 2027 on FY2026 *Issuers that are SMEs*

Note that subsidiary undertakings are exempted from the obligation to report non-financial information, provided they are included in the consolidated management report of their parent undertaking and that the report includes non-financial information pursuant to the CSRD.

What do you need to report?

At the heart of CSRD reporting are the European Sustainability Reporting Standards (ESRS). There are currently twelve draft standards, and it is expected that the European Commission will adopt the ESRS by 30 June 2023 (see figure 2).

SECTOR-AGNOSTIC STANDARDS				SECTOR-SPECIFIC STANDARDS *(coming later)*
Cross cutting standards	Topical standards			
	Environment	Social	Governance	SME-PROPORTIONATE STANDARDS *(coming later)*
ESRS 1 General principles	**ESRS E1** Climate change	**ESRS S1** Own workforce	**ESRS G1** Governance, risk management and internal control	
ESRS 2 General disclosures	**ESRS E2** Pollution	**ESRS S2** Workers in the value chain	**ESRS G2** Business Conduct	
	ESRS E3 Water and marine resources	**ESRS S3** Affected communities		
	ESRS E4 Biodiversity and ecosystems	**ESRS S4** Consumers and end-users		
	ESRS E5 Resource use and circular economy			

Figure 2: ESRS

There are a number of mandatory disclosures: the general disclosures (ESRS 2) and climate change (ESRS E1), which are an expanded list of data points derived from other EU legislation such as the

Sustainable Finance Disclosure Directive (SFDR); and disclosures on workforce diversity, employees in the value chain and (the impact of) collective workforce negotiations.

Whether your company needs to report on the non-mandatory ESRS depends on the outcome of the double materiality assessment.

Please note that tax does not only play an important role in general disclosures, but also in these other topical standards. In regard to the environmental standards, you can think of carbon/packaging taxes and green tax incentives. For example, in relation to the social standards, you can think of tax in relation to diversity and equality, remuneration and equal pay and tax as a contribution to society. And finally, in regard to the governance standards, you can think of tax in relation to board oversight, business ethics, risk assessment and preparedness, accounting and (non-)financial reporting, tax transparency and tax governance.

Tax as a material topic

To determine if tax is a material topic for your company, you need to look at both impact materiality (i.e., the impact of the organisation on society and environment) and financial materiality (i.e., how sustainability matters financially affects an organisation). Be aware that this materiality assessment does not only cover the ESRS topics. A company is obliged to provide additional information on entity level if tax risks are not or insufficiently covered by one of the standards and if these are considered material based on specific facts and circumstances.

This is where tax comes in, as tax is frequently added on the longlist of topics for the double materiality assessment.

The assessment is mostly done as a joint effort and performed by different departments within your organisation such as the finance or/and sustainability departments. So, please be aware that you as a tax department don't perform a materiality analysis in isolation. When reporting on tax as a material topic, you have to ensure that your disclosures are comparable to the disclosures of other organisations. You can use several tax transparency and reporting frameworks; however, the most common worldwide sustainability tax reporting standard is GRI and the ESRS explicitly mentions GRI. For tax, you could use GRI 207.

If – based on the double materiality assessment – tax is not considered to be a material topic, you should still consider if there is a financial risk or opportunity from a tax perspective for each material topic. For example, you should take into account ESG-related taxes and regulations (e.g., carbon tax, plastic tax, Single Use Plastic Directive, extended producer responsibility, etc). These taxes increase costs and therefore represent a risk, but at the same time ESG-related subsidies (e.g., green incentives) offer opportunities to gain a competitive advantage. Another example are the tax consequences for corporate income taxes (CIT) or value-added taxes (VAT) in case the value chain changes.

Data points

Reporting on tax as a material topic not only implies collecting financial data points, but also non-financial data points and adding a narrative to it. Collecting financial data for public CBCR, ETR and Pillar 2 could already be a challenge. For example, information on plastic taxes could be linked with the VAT system. Collecting non- financial data could be even more challenging. Information on e.g., tax policies, governance, risk management and tax dilemmas is often spread in different systems or is not stored or monitored at all. Would you be able to report an integrated overview on identifying and mitigating tax risks when using listed countries for your investments?

EU Taxonomy, Minimum Safeguards and the link to tax

As noted before, based on the CSRD a company has to report on ESG aspects of the company's development, performance and position. One of these „E“ aspects is whether its activities qualify as environmentally sustainable economic activities as set out in the EU Taxonomy.

From a tax perspective, a taxonomy proof labelled economic activity is aligned with the OECD Guidelines for MNEs. Probably the most challenging part would be that your company should comply with both the letter and spirit of the tax laws and regulations of the countries in which your company operates (referring to the „S“ of ESG). Other tax elements of the OECD Guidelines for Multinational Enterprises (MNEs) are tax governance and tax compliance as important elements of the board oversight, broader risk management systems and the application of the arm’s length principles and guidelines for transfer pricing (referring to the „G“ of ESG).

The “Final report on Minimum Safeguards” issued by the Platform on Sustainable Finance advises how to apply the minimum safeguards and mentions ‘taxation’ as one of the four core topics for compliance with the minimum safeguards. The report notes that EU companies in scope of the CSRD should be considered non-compliant if:

1. The company does not treat tax governance and compliance as important elements of oversight, and there are no adequate tax risk management strategies and processes in place, or/and
2. The company or its subsidiaries has been finally found violating of tax laws.

What can you do in your tax function?

Under the CSRD, companies will have to publish a great deal of new and very specific information which significantly connects to tax. It is important to connect with other departments (finance, sustainability, legal, compliance) to understand the current state of play of materiality assessments and sustainability reporting within your organisation. Data and technology will play an important role when implementing the CSRD. Companies must make the information available in a prescribed structure, tagged, in electronic format (XBRL) and accompanied by an assurance statement by an external auditor.

According to the CSRD, reported sustainability information should take into account short-, medium- and long-term time horizons and information about the organisation’s whole value chain, including its own operations, its products and services, its business relationships and its supply chain, as appropriate. Hence, the CSRD is more than reporting and should be approached as a strategy and transformation opportunity.

For further information about CSRD, please visit our PwC Netherlands website.

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