Country-by-Country Reporting by Multinational Companies

Questionnaire

Question 1

Would it be useful to have common EU rules on the disclosure of financial information on a country-by-country basis? The Accounting Directives already require issuers to identify subsidiaries, jointly controlled entities and associates in other countries. There is, however, no consensus on what further financial data, if any, should be disclosed on a country-by-country basis. This could include information such as: the financial performance in each country including information on intra-group transactions, pre-tax profit, tax information on a country-by-country basis, etc.

No

Please explain. In replying to this question, please consider:

- *(i) whether the existing disclosure requirements (e.g. publication of accounts by subsidiaries of multinationals in third countries concerned) provide sufficient transparency;*
- *(ii) whether there is scope for disclosing information only to public authorities (which could consolidate such information on a "country-by-country" basis before making it public);*
- *(iii) this transparency requirement in the context of corporate social responsibility;*
- *(iv) any possible negative consequences for the EU economy (e.g. impact on security of energy supply in the EU; competitive disadvantages for EU companies which may be disclosing commercially sensitive information, increased reporting costs); and*
- *(v) any possible positive/negative repercussions for corporate governance as a consequence of applying higher transparency standards.*

BUSINESSEUROPE finds it difficult to comment on any of the questions without having an indication of what kind of financial data the questionnaire is referring to and what the benefits of country-by-country disclosure would be from a European perspective. BUSINESSEUROPE can only guess what type of information (e.g. based on question 2) that could be useful or requested for disclosure and the benefit or harm such a disclosure would have. BUSINESSEUROPE believes that the EU should not press forward with any proposals on country-by-country disclosure unless it is clarified what type of information is requested and additional discussions with stakeholders have taken place.

Country-by-country reporting is described in the introduction of this questionnaire as a concept that would require multinational companies to disclose financial information on their operations in third countries (in this context meaning a state that is not a Member State of the European Union and the European Economic Area (EEA)) in their annual financial statements. The EU approach covers all countries outside the EU/EAA area. But then one must ask the initial question of how meaningful country-by-country

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information would be. How useful would it be to disclose payments e.g. in the US, China or India compared to payments in a very small country?

The main goals of general country-by-country reporting are described by the European Commission as being (a) to help investors to better assess the different national activities of multinational companies; and (b) to enhance transparency about capital flows, for instance, to better enforce tax rules. The main goal of disclosures proposed for the extractive industry is to provide more transparency about payments to governments.

The primary objective of the EU Accounting Directives is to achieve harmonization of accounting in Europe. Focus is on the protection of shareholders and creditors (providers of capital). The objective of general-purpose financial reporting, as set out in the Framework of the IASB, is to provide information that is useful to investors and other capital market participants in their decisions about providing resources to companies. BUSINESSEUROPE further believes that financial reporting should also be useful for the entity preparing the information. Disclosure requirements about country-by-country reporting in financial statements should be tested against those objectives.

To our knowledge, country-by-country reporting has never been requested by investors and other capital market participants. To the extent that such information is useful to investors of EU listed companies, BUSINESSEUROPE believes these needs are appropriately met by the existing requirements under the Transparency Directive (management report containing a review of the business and the principle risks and uncertainties faced), the EU Accounting Directives (identify subsidiaries, jointly controlled entities and associates) and IFRS 8 Operating Segments (information about geographical areas).

Country-by-country information would not only add to what is already regarded as increasingly complex and potentially confusing financial statements, but also impose further costs, including those arising from the need for groups and their auditors to apply lower levels of materiality. Therefore, a more detailed reporting on a country-by-country basis would increase the risk of creating an information overflow and thus burden the investors´ capacity of finding material risks. The legislator of the Transparency Directive had its reasons to limit the number of risks subject to report. BUSINESSEUROPE is concerned about the potential negative effects of conflicting reporting requirements from multiple sources. It could be very burdensome for companies to comply with such requirements and they could also create significant confusion for the users of the information.

The stated goal of enhancing transparency about capital flows in third countries, e.g. to improve enforcement of tax rules, is outside the scope of disclosures provided for today in general-purpose financial statements, according to the EU Accounting Directives and the IASB Framework. Furthermore, it is difficult to see that such information would be useful for preparers of financial statements. Using financial statements as a tool to reach such goals would alter the objectives of financial reporting in a fundamental way. Therefore, BUSINESSEUROPE does not support disclosure of country-by-country information in financial reports.

If the EU adopts rules on country-by-country reporting, this might lead to a competitive disadvantage for EU companies if other economically important countries or regions (e.g. China, India or Russia) do not implement similar rules for their companies. Presentation of country-by-country information can also be commercially sensitive and/or breach confidentiality agreements which could, in practice, put the EU capital market at a competitive disadvantage and therefore would not be beneficial to investors. As regards the extractive industry, BUSINESSEUROPE would like to stress the benefits of the Extractive Industries Transparency Initiative and that any compulsory requirement actually could undermine that process. BUSINESSEUROPE therefore cannot support regional regulations from the EU in this matter.

The request for tax data is rather confusing and it is uncertain what the underlying question might be. BUSINESSEUROPE is under the impression that one of the goals of the country-by-country disclosure seems to be to gather information to assess e.g. transfer pricing. Yet the scope is third countries, i.e. those outside the EU/EEA. BUSINESSEUROPE is not sure what the EU is trying to achieve regarding this matter and this must be both identified and fully justified before creating significant additional costs and increased work load for all parties involved. It seems like the issues discussed in the questionnaire are not focused on the validation or rejection of profit shifting or mispricing. In order to do so, one must collect basically all information contained in tax returns plus attachments. But this would be in conflict with standing parameters like confidentiality and privacy. Therefore, tax data might have to be collected through the accounts of entities, as a “proxy” for information contained in tax returns. But this is a poor “proxy” for several reasons.

The tax information in financial statements is prepared under accounting requirements where the tax charge for the year can be very different from tax payments. In any case, tax information for a specific country is based on local statutory accounts which may not be prepared under the same accounting requirements as the consolidated financial statements. It is therefore difficult to see that disclosures of country-by-country tax payments in the consolidated accounts can provide meaningful information. If desired, such information should be available from local statutory accounts of subsidiaries where available. If not available, BUSINESSEUROPE believes that it should not be the role of the EU to unilaterally interfere in other local jurisdictions’ arrangements by imposing such disclosure requirements only for EU companies.

To sum up, BUSINESSEUROPE believes there is a danger of the EU falling prey to every special-interest group with their own agendas, by “expanding” general-purpose financial statements to encompass a variety of demands unrelated to their prime purpose. General-purpose financial reporting should not be overloaded by alien objectives, in particular as the pursued objectives of country-by-country reporting cannot be properly achieved. It is hard to see what the benefits would be for the EU and European companies.

Question 2

Would the disclosure of financial information on a country-by-country basis by multinational companies be meaningful to investors of the company concerned?

No

In replying to this question, please consider:

- *(i) whether there are risks inherent to multinational companies' activities that could be identified through the disclosure of financial information on a country-by-country basis, and*
- *(ii) any possible positive/negative repercussions for corporate governance as a consequence of applying higher transparency standards. If yes, please specify the type of financial information that would be useful (e.g. intra-group transactions, turnover, pre-tax profit, tax expenses on a country-by-country basis, etc.), for which purpose, and how such disclosure could help in achieving the objective of being meaningful to investors. Please consider whether additional specific information would be needed for companies operating in certain sectors (e.g. financial services, extractive industry, other)*

Please refer to the comments under question 1. BUSINESSEUROPE also questions the reference to "higher transparency standards", as this begs again the question for what exact aim and target group?

Question 3

Would the disclosure of financial information on a country-by-country basis by multinational companies be useful for the purposes of improving tax governance at a global level?

No

Please explain the type of financial information that would be useful (e.g. intra-group transactions, turnover, pre-tax profit, tax expenses on a country-by-country basis, etc.), and how such disclosure could help in achieving the objective.

It is not clear what is meant by improving tax governance at a global level. This could be interpreted as improving enforcement of tax rules (in third countries). Assuming that this is how this objective should be interpreted, we would like to reiterate what we have said under question 1. The purpose of improving tax governance at a global level through disclosure in financial reports is outside the scope of general-purpose financial statements. Adding to this, we do not believe that accounting-based information would be helpful in achieving this objective and we find it difficult to believe that a unilateral requirement by the EU for European companies would be helpful in reaching any "global tax governance improvement".

Question 4

Would the disclosure of financial information on a country-by-country basis by multinational companies active in the extractive sector (e.g. minerals, oil, natural gas, etc.) be useful in order to improve domestic accountability and governance in natural resource-rich third countries? As defined in the IASB Discussion Paper DP/2010/1 on Extractive Activities (April 2010): "Exploring for and finding minerals, oil and natural gas *deposits, developing those deposits and extracting the minerals, oil and natural gas. These are referred to as extractive activities or, alternatively, as upstream activities. Minerals, oil and natural gas are non-regenerative natural resources. In other words, they cannot be replaced in their original state after extraction. Minerals are naturally occurring materials in or on the earth's crust that include metallic ores (such as copper, gold, silver, iron, nickel, lead and zinc), other industrial minerals (non-metallic minerals and aggregates), gemstones, uranium and fossilised organic material (coal). Oil and natural gas, often referred to collectively as petroleum, can be defined as a naturally occurring mixture consisting of hydrocarbons in the gaseous, liquid or solid phase (such as tar sands or oil shale)."*

No

Please explain the type of financial information that would be useful (e.g. intra-group transactions, turnover, payments to governments, pre-tax profit, tax expenses on a country-by-country basis, etc.), other narrative information on activities rather than figures, and how such disclosure could help in achieving the objective.

The purpose of improving domestic accountability and governance in natural resource-rich countries is outside the scope of general-purpose financial statements. Please also refer to our comments regarding question 1.

Question 5

Would it be useful if financial information on a country-by-country basis by multinational companies would be presented according to predefined standards or formats?

No

In replying to this question, please consider, in the absence of existing international accounting standards on this issue:

- *(i) how could this objective be achieved (e.g. disclosure in the annual management report);*
- *(ii) at what level should the data be comparable (e.g. at the level of the multinational "company", for the benefit of investors; at the level of the "country", for the benefit of other stakeholders; other?);*
- *(iii) who could prepare any common reporting format of this kind (e.g. the IASB, ESMA, the OECD) and what would be the advantages of the latter bodies compared to the IASB.*

Please refer to our comments regarding question 1. We would like to reiterate that we find it almost impossible to answer such a question, considering that it is not clear what kind of information with what precise aim should be disclosed and why this should be a burden imposed by the EU on European companies.

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Question 6

If country-by-country reporting were to be considered useful, what kind of multinational companies would usefully be targeted?

None.

Please refer to our comments regarding question 1.

Question 7

Please provide information on the cost that you estimate that the introduction of country-by-country disclosure requirements could entail.

As noted under question 1, we believe that collecting the information required for country-by-country disclosure would be highly time-consuming and lead to increased costs for companies. This is because country-by-country information is usually not available at group level, as it is neither required nor useful for the management for the operation of a group. BUSINESSEUROPE does not believe that the benefits would outweigh the costs. This is especially so as the costs would certainly be incurred while, for the reasons noted above, it is difficult to identify what the benefits would be.

Question 8

Please provide any additional comments you may have that have not been addressed above.

Country-by-country reporting is a highly political and undetermined issue. It is not clear what objectives such reporting requirements could or should contribute to. One possible view is that country-by-country disclosure will enhance better compliance with tax rules, but another possible interpretation is that disclosure requirements might be a way of putting pressure on companies to increase tax payments in third countries, although one might wonder why this third country would need information at the group level, as all relevant information should be available locally, gathered by the local authorities. BUSINESSEUROPE believes that a discussion about accountability and increased reporting requirements for companies must be put into a broader perspective and be balanced and proportionate. Increasing pressure on companies to disclose information must be balanced with a need to also set rules for what can be called “government governance”, i.e. how states can behave. A very critical issue is how countries/parliaments/politicians could or would avoid using data in such a way that taxpayers pay for the difference between expected and reported amounts (that are actually paid). By setting EU rules on country-by-country reporting, the EU would put more pressure on EU companies. But the EU would have no control over the indirect effects of the increased reporting requirements, neither in the EU Member States nor in third countries. If increased reporting requirements e.g. were to increase tax payments in third countries, elimination of international double taxation would be a major issue. But the EU would have no control over this. This means that it would be up to the EU

Member States to handle such issues. Since Member States have different fiscal policies, EU companies might be affected differently depending on where they are domiciled or established.

Finally, public opinion on companies can very easily be mislead by figures that are not at all suitable for interpretation in a newspaper, without any deep knowledge of the respective company and the tax law of the country where the company is active. A much more appropriate way forward is to help third countries build their capacity to better handle their own tax systems. Some countries generally need more training and more funds to adequately develop and administer their tax systems.

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