



Position statement on corporate tax avoidance and tax transparency

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1. Introduction

After various waves of public outrage, tax avoidance and the need for tax transparency by companies is high on the political agenda. Eumedion generally supports the actions currently taken by governments and regulators, for example the Action Plan to address Base Erosion and Profit Shifting (BEPS) presented by the Organisation for Economic Co-operation and Development (OECD) in October 2015. International cooperation is essential to address this subject and to create a level playing field by implementing the Action Plan as presented by the OECD. Eumedion aims to contribute to the ongoing discussions by issuing a position statement on tax avoidance and tax transparency. In due course, this statement will be reviewed to reflect future developments and to help clarify our position on these topics.

2. Eumedion position

Tax transparency and board accountability

Eumedion participants believe that it is the responsibility of the Board to strike an appropriate balance between the financial benefits of reducing tax expense and any heightened reputational and regulatory risks that accompany specific tax practices. Companies are expected to comply with the legal and regulatory framework that is applicable to their business activities. The Board should assess the risks associated with the company's approach to tax and match it with the appetite for risk and the critical need to maintain the trust of stakeholders. Therefore, we generally support the actions currently taken by governments and regulators to push for more transparency and accountability on tax issues.¹

Tax policy and risk analysis

Companies are expected to disclose a tax policy in their annual report and to demonstrate a responsible approach regarding the management of tax related issues. Any possible short-term financial benefits of engaging in excessive tax planning may outweigh in the long term negative outcomes to brand value, stakeholder relations and the social license to operate. These factors are critical for a company's long-

¹ Reference is made to annex 1.

term success and should therefore be addressed in a tax policy. Investors need insightful information on identified tax risks and an overview of where taxes are paid ('country-by-country reporting'). Promoting greater disclosure of taxes paid per country increases overall transparency and allows for a more detailed analysis by investors. Eumedion participants will ask company management and supervisory boards to demonstrate sound tax practices and tax policies, and clarify how these issues are supervised².

Investors need better information

To better understand and model a company's tax position, investors would like to have forward looking information on taxes, preferably in the annual report, on how the future effective corporate tax expense rate and the effective corporate taxes paid rate are expected to develop. Furthermore, this should include an explanation of the deferred tax assets and deferred tax liabilities. Better information on a company's tax positions allows for an in-depth analysis of where taxes are paid, and where potential risks stemming from excessive tax optimisation may exist.

Annex 2 to this memo provides three examples of good practices on tax reporting by Dutch listed companies.

² Eumedion Focus Letter 2016; <http://eumedion.nl/nl/public/kennisbank/speerpuntenbrief/speerpuntenbrief-2016.pdf>

Annex 1: Regulatory actions and investor initiatives

- a. In October 2015, the OECD presented its [Action Plan on Base Erosion and Profit Shifting](#) (BEPS). During the G-20 Summit in July 2013, the forum called on its member countries to examine how their own domestic laws contribute to base erosion and profit shifting. The member countries were also asked to ensure that international and their own tax rules do not allow or encourage multinational enterprises to reduce overall taxes paid by artificially shifting profits to low-tax jurisdictions. All the OECD and G-20 countries have agreed to adopt the new action plan. During the G-20 Summit on 15-16 November 2015, BEPS was endorsed by the forum, which in its closing statement also pushes for timely implementation of the action plan³.
- b. On March 18 2015, the European Commission released a *Tax Transparency Package*, aiming to fight tax evasion and avoidance⁴. Crucial part of this package is the proposal for automatic quarterly exchange of information on tax rulings between EU Member States. The Tax Transparency Package was followed by a detailed [Action Plan](#) in the Summer of 2015. In September 2015, Eumedion [responded](#) to the consultation on corporate tax transparency from the European Commission.
- c. *Tax transparency by banks*. Increased transparency regarding the activities of credit institutions and investment firms; in particular regarding turnover and profits made, taxes paid and subsidies. The information must be disclosed annually, specified by EU Member State and by non-EU countries in which the institution has an establishment (CRD IV; as of January 1st, 2015). In April 2014, Eumedion disclosed a [position](#) on this issue.
- d. *Introduction country-by-country reporting extractive industry*. Issuers whose securities are admitted to trading on a regulated market and which have activities in the extractive or logging of primary forest industries are obliged to disclose on an annual basis payments made to governments (above € 100,000; including taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes) in the countries in which they operate. The 'country-by-country and project-by-project reporting' is part of the new European Transparency Directive and the new European Annual Accounts Directive and will enter into force for book years starting in 2016.
- e. The European Parliament inserted a requirement in the Shareholder Rights Directive for all European listed companies to publish information, country by country, on profit or loss before tax, taxes on profit or loss, and public subsidies received. Companies with more than 500 employees and a balance sheet total of € 86 million or a net turnover of €100 million should also disclose information on tax rulings. Yet, this amendment needs approval of the European Council of Ministers, which is highly uncertain. Eumedion [commented](#) on the Shareholder Rights Directive in January 2015.

³ G20 Leaders' Communiqué agreed in Antalya; <https://g20.org/g20-leaders-commenced-the-antalya-summit/>

⁴ Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance; http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transparency/com_2015_136_en.pdf

- f. Multinational companies are expected to apply the OECD Guidelines for Multinational Enterprises which contains recommendations on taxation⁵.
- g. The Dutch corporate governance code contains the following best practice (III.5.4): “The audit committee shall in any event focus on supervising the activities of the management board with respect to [...] the policy of the company on tax planning”.
- h. In November 2015, UN PRI launched a set of [guidelines for investor engagement on corporate tax responsibilities](#). The guide was developed by the UN PRI in cooperation with a number of investors. The document explains why and how to engage with companies on their tax practices and policies. It includes a list of red flags for identifying companies to engage with, and a list of suggested topics to discuss with management.

⁵ OECD Guidelines for Multinational Enterprises; <http://www.oecd.org/daf/inv/mne/48004323.pdf>

Annex 2: Good practices in tax reporting

This annex provides three examples of good practices in tax reporting. Overall, the quality of tax policies at large Dutch listed companies varies, only some companies disclose tax payments on a country-by-country basis. From the 25 companies included in the leading AEX index, 13 publish tax strategies on their website or in their annual report.

Good practices

I. ROYAL BAM GROUP NV

BAM discloses an clear and concise policy on tax transparency in its 2014 Annual report. The policy reveals the company's tax strategy, a set of tax principles and a position on country-by-country reporting. BAM's tax policy is aligned with the company's business strategy and with the company's Code of conduct. It gives a clear view of BAM's tax governance framework, overviewed by the Executive Board. Although the company does not explicitly deny the use of tax havens, it states that 'transactions between companies within the Group are conducted on an arm's length basis'. BAM reports on taxes paid in the Netherlands, the rest of Europe and the rest of the world.

Tax strategy Royal BAM Group

BAM pursues a tax strategy that is principled, transparent and timely to support the Group's overall business strategy and objectives. The tax strategy is in line with BAM's Code of Conduct. The Group has established principles governing its tax strategy and the suitability of these were reviewed and approved by the Executive Board.

These principles include the following key points:

- A tax strategy that is aligned with the Group's business strategy and genuine commercial activity and conforms to BAM's Code of Conduct;
- Commitment to ensure full compliance with all statutory obligations for taxes in all countries where BAM is active;
- Management of tax affairs in a proactive manner that seeks to ensure that BAM's operations are in accordance with the law;
- Maintenance of documented tax risk management policies and -procedures and completion of thorough risk assessments before entering into tax planning initiatives;

- Periodic review of processes to ensure controls remain effective and no material departures from acceptable practice have taken place;
- Sustaining good and open relations with tax authorities and commitment to prompt disclosure and transparency enabling them to gain a more complete understanding of BAM's systems and processes.

Within this governance framework, the conduct of the Group's tax affairs and the management of tax risk are delegated to the Group's tax department with support and assistance from the Group and local financial departments. In accordance with BAM's tax strategy, transactions between companies within the Group are conducted on an arm's length basis. Transfer pricing between operating companies is based on fair market terms and the commercial nature of the transactions.

Country by country reporting

Corporate income tax, taxes on wages, social security contributions, and VAT are also considered relevant taxes in relation to the turnover that BAM makes in the areas where it works. These taxes provide good comparability in the Netherlands, the rest of Europe, and the rest of the world for BAM. Under these categories BAM's taxes amount to 807.2 million. Relative to BAM's turnover, the share of taxes paid deviates most from the share of turnover in the Netherlands. Here BAM's share of taxes is relatively high compared to turnover.

Source and more information: [BAM Group 2014 Integrated Report](#)

II. UNILEVER NV

Unilever provides Global Tax Principles on its website. The company states that it considers paying taxes as an important part of its wider economic and social impact. Unilever's Global Tax Principles elaborate, amongst others, on issues around compliance, transparency, tax rulings, accountability and governance. The company established an Internal Tax Risk Framework which monitors tax-related risks and advises on the need to make provisions for possible future tax payments. Regarding taxes paid in the countries where Unilever has operations, the company discloses detailed information per region, country and type of tax.

Unilever Global Tax Principles

Compliance

We act at all times in accordance with all applicable laws and are guided by relevant international standards (for example OECD Guidelines). We aim to comply with the spirit as well as the letter of the law.

Transparency

We are transparent about our approach to tax. We regularly put forward understandable, timely and transparent communication about our tax policy and total tax payments.

Transfer pricing

We aim to pay an appropriate amount of tax according to where value is created within the normal course of commercial activity. Any transfer pricing is always calculated using the 'arm's-length' principle.

Structure

We do not use contrived or abnormal tax structures that are intended for tax avoidance, have no commercial substance and do not meet the spirit of local or international law.

Tax havens

Secrecy jurisdictions or so-called 'tax havens' are not used for tax avoidance.

Tax rulings

We only seek rulings from tax authorities to confirm the applicable tax treatment based on full disclosure of the relevant facts

Relationships with governments

We respect the right of governments to determine their own tax structures, rates of tax and collection mechanisms.

Relationships with tax authorities

We seek to develop strong, mutually respectful relationships with national tax authorities based on transparency and trust. Where countries have weak or poorly constructed fiscal regulation and/or institutions we support work to help develop the capability of tax authorities and systems.

Accountability and governance

We ensure that as a business we have the mechanisms in place to adhere to the above principles and provide both relevant training and opportunities for employees to raise any issues of concern confidentially, consistent with the Unilever Code of Business Principles. We report annually to the Board on adherence to the Unilever Tax Principles.

Source and more information: [Unilever website](#)

III. ASML Holding NV

ASML discloses a strategy on tax transparency which is originated in the company's Code of Conduct. The company states that it 'will report and pay taxes in the jurisdiction in which it operates in accordance with all relevant tax laws and regulations'. The statement says that the company will not only comply with these laws, but will also act according to the spirit of these laws.

In addition, ASML provides information on expected future tax expense rates. During a presentation to investors in November 2014, the company predicted an effective tax rate of approximately 10% until 2020⁶. This relatively low tax rate is a result of the Innovation Box, a rule in Dutch corporate tax law which states that income associated with R&D is partially exempted from taxation.

ASML Tax strategy and transparency

Tax principles

ASML operates under a Code of Conduct. ASML's Code of Conduct is published on our website under Code of Conduct in the Governance section (also see section 'Business ethics and human rights'). The tax principles under which ASML operates are derived from ASML's Code of Conduct. This code and the related tax principles guide ASML's dealings with all different type of taxes which it is obliged to report and pay in the jurisdiction in which it operates, including taxes on profits, trade taxes, and taxes paid on employee income.

⁶ http://staticwww.asml.com/doclib/investor/asml_8_Investor_Day-Financial_Model_WNickl.pdf

The rule and spirit of the tax laws

ASML will report and pay taxes in the jurisdiction in which it operates in accordance with all relevant tax laws and regulations. ASML will comply with such laws and regulations as well as with the spirit of those laws and regulations.

Profit allocation

ASML's worldwide profits are allocated to the various jurisdictions in which ASML operates based on the value created by ASML's business in those jurisdictions. ASML's allocation method for its worldwide profits is based on internationally accepted standards of profit allocation as published by the Organization for Economic Cooperation and Development (OECD) and relevant rules and regulations in the jurisdictions in which ASML operates.

Timely and complete compliance

ASML aims to file all the required tax-relevant filings with the appropriate tax authorities in a timely and complete manner. To assure timeliness and completeness, tax filings will be monitored through ASML's corporate control framework and comprehensive tax control frameworks. The control frameworks are regularly reviewed and tested. Furthermore, ASML aims for timely payment of its taxes due to the tax authorities.

Transparency

ASML strives for open and constructive dialogue with tax authorities on the basis of disclosure of all relevant facts and circumstances. ASML aims to be clear about all aspects pertaining to its tax position and share these in a transparent manner with tax authorities to achieve upfront certainty on tax matters.

Tax governance embedded in company management

To safeguard adherence to these tax principles, ASML maintains a well-educated and adequate staff of tax professionals who are in constant dialogue with ASML's business and ASML's senior management. ASML's senior management is engaged and involved in ASML tax matters.

Source and more information: [ASML website](#).