THE COUNTRY-BY-COUNTRY TAX REPORTING DIRECTIVE: COMMENTS ON THE POSITIONS OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

SUMMARY OF EUMEDION'S KEY MESSAGES

Eumedion has always generally supported the European Commission's proposal to introduce an obligation for large multinational undertakings, whether they are headquartered in the EU or in a third country, to publicly report where taxes are paid ('country-by-country tax reporting'). Investors will benefit from increased public transparency on where taxes are paid since it increases overall transparency and allows for a more detailed analysis by investors. It also enables investors to scrutinise the activities of all large multinational undertakings with activities in the EU. Furthermore it offers shareholders the opportunity to have a dialogue with the board of the company on this topic. In the light of the negotiations with the EU governments' representatives, Eumedion[1] would like to make some comments on the positions of the European Parliament and the Council.

CONTENT OF THE REPORT ON INCOME TAX INFORMATION

According to the European Commission's proposal the report on income tax information shall include information relating to all the activities of the undertaking and the ultimate parent undertaking, including activities of all affiliated undertakings consolidated in the financial statement in respect of the relevant financial year (art. 48c, par 1). According to the European Commission's proposal and the position of the Council the country-by-country information should be presented for each Member State and for a limited of number of tax jurisdictions which pose particular challenges. For all other tax jurisdictions the information should be presented on an aggregated basis (art. 48c, par. 3). As a consequence investors will not be able to analyse where taxes are paid in those other tax jurisdictions and will therefore not be able to detect where potential risks stemming from excessive tax optimisation may exist. Furthermore, this approach deviates from the existing legislation for issuers active in the extractive or logging of primary forest industries and for credit institutions and investment firms which requires that the information is specified for each government respectively for each Member State and each third country

[1] Eumedion represents the interests of institutional investors who have more than € 7 trillion assets under managements and who invest in almost all European listed companies.

in which it has an establishment.[2] Eumedion supports the position of the European Parliament that the country-by-country information should not only be provided for each Member State and where a Member State comprises several tax jurisdictions for each tax jurisdiction but also for each tax jurisdiction outside the European Union. Therefore full support for amendment 35, 42, 43 and 44 of the European Parliament.

INDEPENDENT CHECK

The European Commission proposes briefly that the statutory auditor(s) or audit firm(s) should also check whether the report on income tax information has been provided and made accessible in accordance with art. 48b, 48c and 48d of the directive and that they shall indicate in the audit report if the report on income tax information has either not been provided or not made accessible in accordance with those articles (art. 48f). According to the Council's position the role of statutory auditor(s) or audit firm(s) is limited to stating in the audit report whether the undertaking is required to draw up a report on income tax information in accordance with art. 48b. The European Parliament has not suggested any amendments to art. 48f, but clarifies in preamble 11 that statutory auditor(s) or audit firm(s) should also check that publicly-disclosed information is in line with the audited financial information for the undertaking (amendment 19). From an investor perspective it is important that the reported country-by-country information is reliable. The board, under supervision of the supervisory board, is primary responsible for the quality and completeness of the disclosed country-by-country information. Nevertheless, we believe that art. 48f should be strengthened by requiring that the information in the country-by-country report should be audited by the statutory auditor and shall be published as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the undertaking concerned. This approach is also in line with the existing legislation for credit institutions and investment firms which prescribes that the country-by-country report should be audited in accordance with Directive 2006/43/EC.[3]

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Eumedion's registration number with the European Commission and Parliament is: 65641341034-11.

[2] Art. 6 of Directive 2004/109/EC in conjunction with chapter 10 of Directive 2013/34/EU respectively art. 89, par. 1, Directive 2013/36/EU.
[3] Art. 89, par. 4, Directive 2013/36/EU.