Country-by-country Reporting: Eurosif's position

Executive Summary:

Eurosif supports a mandatory, annual CBCR, for listed companies with data made public to the company's stakeholders, including investors and shareholders. However, we note two caveats to this support:

- Progressing an ambitious text for the revision of the Shareholder Rights Directive is a priority; Country-by-Country is not a core element of the Directive in our mind and as such, should not be seen as an obstacle to reach a strong compromise;
- In the current economic environment, Eurosif is sensitive to the argument that CBCR might be burdensome and onerous as a policy to implement on all listed companies. We therefore recommend that policy-makers think about ways to focus to alleviate such burden and make recommendations in that direction.

Detailed position:

- As a general principle, Eurosif's view is that tax systems should be effective in helping governments to pursue their mission, ie. to build the conditions for domestic growth, welfare and long-term, sustainable investment. As part of this agenda, corporate taxation plays a key role.
- Further, recent scandals have highlighted the existence of aggressive tax strategies. Such strategies are not only detrimental to the action of local governments but can arm a company's reputation and brand value and create a range of material risks for investors. It is also a matter of corporate responsibility to protect the interests of all other stakeholders that may be negatively impacted by such practices (States, populations).
- Promoting greater disclosure of taxes paid per country increases overall corporate transparency and allows for a more detailed analysis by investors. Several members of Eurosif are requesting this information already or say that they will be ready to use it.
- The EU has already imposed CBCR to banks (CRD IV) and extractive industries. We think that application of such regulation should not be limited to these two sectors alone, but should apply to other – listed – companies, regardless of their activity.
- **Eurosif supports therefore a mandatory, annual CBCR, for listed companies with data made public to the company's stakeholders, including investors and shareholders.** The accounting regulation looks like the logical vehicle to mandate CBCR.
- Having said this, Eurosif acknowledges that the tax situation across various sectors may vary significantly (e.g. the software industry should link taxes paid to employees, whereas for consumer staples a link to revenues might make more sense). We therefore reckon that CBCR reporting requirements may differ across sectors.

- To be relevant and useful to investors and stakeholders, the CBCR information should not be limited to paid tax amounts only but be connected to contextual information (at country level) such as turnover, number of employees, revenue, operating profit / loss before tax, taxes paid, public subsidies, capex and free cash-flow on a country-by-country basis. This contextual data could serve to define tax activity KPIs that would allow peer comparison; however, it would require a certain level of standardization (definitions and calculation formulas).
- However, to make it not too burdensome for companies threshold levels (for example 10% of revenues/operating profit) could be applied. It means that for all countries which represent less than 10% operating profits of a certain company, all contextual figures could be reported on an aggregated level.
- Eurosif also takes note also of the OECD BEPS Guidelines on Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting (2015). These guidelines recommend a CbC report and specify its implementation. Any EU requirement on CBCR should not try to reinvent the wheel but leverage these guidelines.

The investor rationale for CBCR

Context: the emergence of a new environment:

- There is intense scrutiny around corporate tax policies. High profile media campaigns have exposed the tax avoidance strategies of companies such as Apple, Starbucks and Google – eroding brand value and leading to protests and boycotts (2009 guardian Tax Gap series, NYTs' exposés re: apple and Google, Reuters' exposé re: Starbucks, Action Aid report on # of subsidiaries of FTSE 100 companies are located in tax havens, 2010 UK Uncut movement)
- Distinction between evasion (illegal) and avoidance (legal) has dissolved in the eyes of governments, NGOs and citizens.
- Regulators (in both developed and emerging markets) are looking to crack down on tax avoidance due to austerity measures and reduced tax receipts.

The risk mitigation argument:

- Aggressive tax practices can undermine the sustainability strategies that companies have adopted and corporate commitments to economic development projects.
- Short-term financial gains from an aggressive tax positions may be offset by medium- to long-term repercussions related to reputational risks.
- Risks are derived from both actual tax practices and related lack of transparency. Failing to disclose one's tax position constitutes as much of a risk as the aggressive tax practices themselves.

Investors therefore need to assess how a company fares with regards to the following risks when analyzing its tax policy:

- Reputational Risks – Increased public and regulatory scrutiny and subsequent brand erosion.
- Risk to Relationship with Host Country – Expansion projects could be subject to approval delays or rejection. Potential loss of “license to operate”.
- Regulatory / Legal Action Risks - Investigations by tax authorities and/or politicians may become more frequent.
- Financial Risks – Uncertainty concerning regulatory changes could contribute to “surprises” and increased earnings volatility.

The market development argument:

- The development of a consumer class in emerging markets (on which the company will depend for future growth…) depends on the country’s economic development more broadly. This requires a strong, legitimate and sustainable tax system that can generate consistent funds for education, infrastructure, healthcare and other inputs necessary for economic growth.
- By exploiting provisions within tax treaties, negotiating tax concessions and engaging in other tax avoidance strategies, companies increase governments’ reliance on value-added taxes (considered regressive by many…), reduce government tax receipts, increase their reliance on foreign loans and aid, and undermine economic development.
- In addition, concessionary tax policies in one emerging market country encourage similar policies elsewhere, creating a “tax competition that is ultimately a race to the bottom”.

By way of background, the e International Trade Union Confederation & the Trade Union Advisory Committee to the OECD recently published a call for Pension Fund Responsible Tax Practices.