POSITION ON THE PROPOSAL FOR A DIRECTIVE REGARDING DISCLOSURE OF INCOME TAX INFORMATION BY CERTAIN UNDERTAKINGS AND BRANCHES COM (2016) 198 FINAL

SUMMARY OF KEY MESSAGES

The European Commission’s proposal introduces an obligation for large multinational undertakings to publicly report where taxes are paid (‘country-by-country reporting’). Eumedion, representing the interests of institutional investors who have more than € 4 trillion assets under management and who have investments in almost all European listed companies, has reviewed the European Commission´s proposal regarding disclosure of income tax information by certain undertakings and branches and would like to make some comments.

Eumedion generally supports the European Commission’s proposal. 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. Investors also need this information in order to gain better insight into the risk-return profile of the company. In recent times it has become apparent that there are increasing governance, compliance, financial reporting, reputation and social risks attached to an aggressive tax strategy of a company, partly executed via subsidiaries in so-called tax havens. Public country-by-country reporting will also offer shareholders the opportunity to have a dialogue with the board of the company on this topic. The dialogues that Eumedion participants held in 2016 revealed that the majority of the Dutch listed companies do not have any objections to public country-by-country reporting in principle, but they consider this information as competitive information. Therefore, European legislation is needed in order to create a European level playing field with respect to detailed tax payment disclosures.

We concur with the European Commission that all large multinational undertakings with activities in the EU should have the same disclosure requirements, whether they are headquartered in the EU or in a third country. This enables investors to scrutinise the activities of all multinational undertakings with activities in the EU (instead of only the activities of European businesses) and it creates a level playing field.

Some elements of the proposal deserve to be *strengthened,* including the following:

1) The country-by-country information should be presented for each Member State and for each tax jurisdiction and on an aggregated basis for all other third countries (Art. 48c, par 3). As a consequence investors will not be able to analyse where taxes are paid in those other third countries 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 businesses in the extractive and logging industries and for banking groups which requires that the information is specified for each government respectively each country (Art. 89, par. 1, Directive 2013/36/EU, Art. 6 of Directive 2004/109/EC and Chapter 10 of Directive 2013/34/EU). It is important to strike the right balance between publishing meaningful and proportionate information and the administrative burden that comes with that. Therefore Eumedion believes that companies active in third countries should also be obliged to present the information mentioned in Art. 48c, par. 2 on a country-by-country basis if the payments (whether made as a single payment or as a series of related payments) to a third country exceed EUR 100 000 within a financial year. For the remaining third countries the information could be presented on an aggregated basis. Therefore: **the country-by-country information should not only be provided for each Member State and each tax jurisdiction but also for each third country where the payments exceed EUR 100 000 within a financial year.**

2) Statutory auditors and audit firms are obliged to check whether the country-by-country report has been provided and made accessible in accordance with the requirements of the proposal (Art. 48f). From an investor perspective it is important that the reported country-by-country information is reliable. The executive board, under supervision of the supervisory board or non-executives, is primary responsible for the quality and completeness of the disclosed country-by-country information. Nevertheless, we believe that the statutory auditor should have the possibility to 'alert' shareholders and other users of the country-by-country report in case the information presented in that report is not correct of incomplete. This is also in line with the existing legislation for banking groups which prescribes that the country-by-country report should be audited (Art. 89, par. 4, Directive 2013/36/EU). Therefore: **the information in the country-by-country report should be audited by the statutory auditor.**

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