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Your ref

Our ref  
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**Commission proposal on country-by-country reporting**

Dear Sir,

I refer to the proposal from the European Commission on country-by-country reporting («CBCR»), included in its proposal for a Directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, cf. COM (2011) 684/2. The proposal is currently being considered by the European Parliament and the Council, and I have learned that both the European Parliament and the Council are considering amendments to the Commission's proposal in order to further enhance the CBCR requirements.

CBCR is a different concept from regular financial reporting as it presents financial information for every country that a company operates in, rather than a single set of information at a global level. Reporting requirements showing what a multinational company pays to a host government, i.e. taxes, royalties and bonuses, is likely to show a company's financial impact in host countries. It is my opinion that such a transparent approach will encourage more sustainable businesses.

The Norwegian Government welcomes and generally supports the Commission's initiative on introducing reporting requirements on a country-by-country basis. The proposal is in line with the Norwegian Government's work related to increased transparency in international payment flows and the work of responsible investment practices of the Norwegian Pension Fund. I also find the proposal to be in line with the Government's efforts to enter into information agreements with so-called «tax havens», with the purpose to combat tax evasion.

The Norwegian Ministry of Finance sent the proposal from the European Commission on a public consultation earlier this winter. The stakeholders are in general positive to the proposal, but are divided on the specific content of such provisions. The Norwegian Government has assessed the answers received, and I would like to address some issues that in my opinion could help improve the proposal even further.

On a general basis the CBCR regulation should undertake a thorough assessment, where it should be clarified that the benefits of the CBCR exceed the economic costs and administrative burdens of the proposal for the concerned companies. It is pointed out that much work is done both nationally and internationally to ease the financial costs and administrative burdens that is currently imposed on businesses.

The purpose of the CBCR regulation is to enhance transparency of payments to governments made by large undertakings in extractive and logging industries. Such enhanced transparency will be helpful in the combat against corruption. In my opinion the prevention of corruption as one main purpose of the CBCR regulation could however, be further strengthened. To strengthen this purpose, the definition of «Government», as it follows from the proposal article 26, paragraph 3, should be expanded to also include *persons representing or acting as intermediaries for a «Government»*. By expanding the definition I believe one would avoid ambiguous delimitations as to which payments should be disclosed under the CBCR regulation.

I further believe that it should be clarified that one purpose of the CBCR regulation should be to prevent tax evasion, in addition to secure the tax base in countries where the undertakings in the extractive industry operate. In 2008, the Ministry of Finance appointed an expert commission to suggest possible legislative actions to combat tax evasions. In the commission's report to the Ministry of Finance, NOU 2009: 4, the commission points out that (unofficial translation):

*«Related party transactions pose a particular challenge for the correct assessment of income and taxes. Such parties will have a common interest in fixing a tax motivated transaction price rather than a price that reflects the fair business value of the transaction.»*

The challenges that such transactions pose for tax administrations has been recognised by the OECD in the «Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations». These guidelines have been implemented in Norwegian legislation, and transfer pricing has since been a focus area for the Norwegian tax administration. Some of the challenges associated with related party transactions in an accounting context have also explicitly been recognised by the EU through the provisions of the existing Accounting Directive, 2006/46/EC.

Recognising the challenges these kinds of transactions nevertheless pose for the tax administration even in developed economies, it is my view that EU should now take this opportunity to extend the existing disclosure requirements of the Accounting Directive relating to related party transactions, by establishing a CBCR regime that could contribute to combating tax evasion through tax motivated transfer pricing in less developed resource rich countries.

For this purpose, I would suggest that EU consider implementing a disclosure requirement in the proposal now under consideration such that on a country-by country basis information should be given in a supplementary note about transactions with related parties. For each related party transaction, a description should be given of the identity and location of the related party, together with information about the nature and amount of goods and services received from or delivered to the related party, including intellectual property rights, the price paid for those goods, services and intellectual property and the main valuation principles employed.

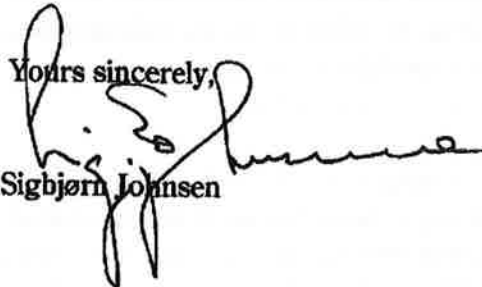
I recognise that such a disclosure requirement might entail additional administrative burdens for the reporting entities. I do, however, believe that such administrative burdens would be proportionate to the value of such information to tax administrations in resource rich jurisdictions where the OECD guidelines have not been implemented for tax control purposes, provided that a suitable materiality threshold is set for the disclosure requirement. In Norway, the materiality threshold of annual total related party transactions exceeding NOK 10 million has been considered appropriate, but we recognise that a lower materiality threshold might be considered more appropriate for the purpose of a CBCR disclosure requirement. I encourage EU to further consider this issue and invite the European Parliament and the Council to consider amendments in the proposal that safeguards that the purpose of the CBCR regulation also includes preventing tax evasion.

Further, in my opinion the CBCR regulations should to a greater extent than suggested by the Commission aim to highlight what companies contribute in exchange for the natural resources extracted from each country. CBCR will be truly meaningful if the information on payments is compared with the amount of natural resources that are removed from each country. The companies' production volumes related to each country should therefore be included in the CBCR requirements.

In article 38 paragraph 5 of the Commission proposal, there is an exemption from the reporting requirements where criminal legislation in third countries prohibits public disclosure of such information required by the CBCR regulation. As the Norwegian Government sees it, such an exemption could provide adverse incentives to corrupt governments to prohibit disclosure of information. Such an exemption should therefore be deleted from the proposal. Alternatively, the companies should make a statement on the reasons for not complying with the reporting requirements and disclose the name of the governments concerned.

It is our opinion that the CBCR regulation should be evaluated within a shorter time horizon than prescribed in the Commission proposal, preferably within three years. The evaluation should consider whether the reporting requirements should be extended also to other industries.

The Norwegian Government welcomes swift implementation of the CBCR regulation in the EU Member States. We intend to implement CBCR requirements in national legislation by 1 January 2014, and as the EU CBCR regulations, through the implementation into the EEA Agreement, will be relevant when adopting national rules, we look forward to the final outcome of the considerations between the Council and the European Parliament.

Yours sincerely,  
  
Sigbjørn Johnsen