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Your ref:

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Dear Mr Hooijer

COUNTRY-BY-COUNTRY REPORTING

ICAEW is pleased to respond to your request for comments on the consultation *Country-by-Country Reporting by Multinational Companies.* We have attached as an appendix to this letter our answers to each of the questions contained within the European Commission questionnaire. We have also submitted a response to the questionnaire electronically.

ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance, which has over 775,000 members worldwide. ICAEW is listed in the European Commission's Register of Interest Representatives (identification number: 7719382720-34).

The financial crisis has led to new demands for greater transparency in international taxation. In the search for a solution, country-by-country reporting is being mooted as part of the new financial infrastructure to be constructed in the wake of the crisis. Some think of it as a means to bring about 'tax justice' and better government for developing countries; some expect it to tackle tax avoidance; others expect it to improve investor relations. The Publish What You Pay coalition's objective of improving governance in resource-rich developing countries is a laudable one and we welcome efforts to investigate ways of bringing about positive change. Indeed, ICAEW have been engaged with this debate for some time. For example, in Autumn 2009 we hosted a discussion which we brought together representatives of UK government and the IASB, tax justice campaigners, accountants, auditors and investors. In Spring 2010 we hosted a round-table for the IASB as part of their consultations regarding the discussion paper *Extractive Activities*. Again, this event acted as a forum for discussion between a range of stakeholders with an interest in country-by-country reporting.

In principle we believe that much of value can be achieved through country-by-country reporting, particularly in areas of the world where greater transparency is required. The disclosure of financial information may well have an important role to play in this endeavour. However, to ensure that the information is credible and relevant and - moreover - that the costs and efforts of providing it are proportionate, there needs to be a high degree of understanding about the specific uses to which the information will be put. This is likely to involve further discussion with advocates of country-by-country reporting and other interested parties, and dialogue between the Commission and the SEC over the approach being taken to implementing new US legislative requirements. Indeed, ideally, the EU would participate in a single global initiative to develop meaningful and understandable reporting in this area.

We explain in detail in the appendix to this letter why we remain firmly of the view that any innovations in this area should not involve changes to the existing regime for annual financial reporting. We would however be very pleased to assist the Commission in developing an appropriate reporting mechanism that meets as far as practicable the objectives of the Publish What You Pay coalition. As one example of the possible outcomes, the Commission might specify that in future certain EU companies will have to disclose certain types of payment to overseas governments through annual electronic filings, allowing the information thus disclosed to be aggregated and published.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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Question 1

Would it be useful to have common EU rules on the disclosure of financial information on a country-by-country basis? The Accounting Directives already require issuers to identify subsidiaries, jointly controlled entities and associates in other countries. There is, however, no consensus on what further financial data, if any, should be disclosed on a country-by-country basis. This could include information such as: the financial performance in each country including information on intra-group transactions, pre-tax profit, tax information on a country-by-country basis. Please explain.

In principle we believe that much of value can be achieved through country-by-country reporting, particularly in areas of the world where greater transparency is required. The disclosure of financial information may well have an important role to play in this endeavour. However, we do not accept that the insertion of additional country-specific disclosures into the annual report is the best way of achieving the aims of the Publish What You Pay coalition. The IASB's framework states:

'*The objective of general purpose financial reporting is to provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions about providing resources to the entity*.'

Reporting to shareholders on company performance is also the basis in EU law for the preparation of financial statements. Tempting though it is to use the annual report as a vehicle for disclosures driven by other public policy imperatives, we do not believe that mandating country-by-country disclosures is consistent with the fundamental objective of financial statements and the annual report. Indeed, including such miscellaneous disclosures can make it more difficult to meet the objectives of financial reporting. To the extent that country specific information is material, IFRS 8 *Segment Reporting* already requires its disclosure. Where it is not material, it does not represent useful information for capital providers and its disclosure risks cluttering the financial statements and obscuring other more relevant information.

Thus we strongly support the IASB's objective for financial reporting. This focus on capital providers as the primary user group avoids the obfuscation of financial information through attempts to meet in full the many disparate and potentially-conflicting information needs of other user groups. This allows financial reports to be produced which contain clear, transparent and comparable financial information, focussed on investors but able to meet the primary information needs of a wide range of users.

We also believe it would be counter-productive for the EC to mandate additional financial statement disclosures over and above those required by IFRS. The EC made a decision that from 2005 the contents of the financial statements of entities listed in the EU would be determined by the requirements of IFRS. IFRS represents a complete framework for financial reporting, which is established following a transparent due process and in accordance with an agreed agenda. A European mechanism for engaging with this process and for reviewing the final standards prior to EU adoption is in place. If revisions to accounting requirements are felt to be necessary then these should be addressed through the IASB's due process. The alternative is to risk the financial statements, and moreover the requirements that must be followed by preparers, becoming a collection of disparate and unconnected elements that no single body has the jurisdiction to address. This is a most undesirable outcome.

Preparers, particularly those with listings in more than one jurisdiction, are also subject to requirements from different sources with regard to management commentary which is included in the annual report but outside the scope of the audited financial statements. This increases the complexity of reporting and can make it more difficult for users to understand the annual report, particularly where the same issue is subject to similar, but not identical, disclosure requirements from different sources. We do not support the promotion of country specific disclosures that would be in addition to those already required by IFRS and the existing Directives for management commentary.

In replying to this question, please consider:

(i) whether the existing disclosure requirements (e.g. publication of accounts by subsidiaries of multinationals in third countries concerned) provide sufficient transparency

IFRS already provides a level of transparency for investors regarding a company's overseas operations. IFRS 8 *Segment reporting* already requires the disclosure of revenues from customers located in any individual country, if the total is material. Similarly, total assets held in any particular country must be disclosed where this is material. In addition IAS 27 *Consolidated and Separate Financial Statements* requires disclosure by the parent company of a list of all significant investments it holds in other companies. This information must include the country of incorporation or residence of each of these group companies and therefore interested readers can approach the relevant country's company registrar to obtain individual company information, where published in the jurisdiction in question.

As noted above, the EC made the decision that from 2005 the contents of the financial statements of listed companies should be determined by the requirements of IFRS. We do not accept that the EC should now insert additional requirements into the financial statements; such a process would lead to increasing incoherence. If, contrary to our advice, the EC were to modify the existing financial reporting regime by introducing additional disclosure requirements, these should be limited to management commentary and should not affect the audited financial statements.

(ii) whether there is scope for disclosing information only to public authorities (which could consolidate such information on a "country-by-country" basis before making it public)

We do not believe that the provision of specific information to regulators falls within the remit of general purpose financial statements, which is limited to providing useful information to capital providers. Regulators, such as tax authorities, are able to require additional information from companies and other bodies can be created to collect information on a voluntary basis from companies and governments.

We agree however that it may be worth exploring whether such a mechanism, outside the scope of financial reporting, would better meet the objectives of the Publish What You Pay collation. To ensure that the information is credible and relevant and moreover that the costs and efforts of providing it are proportionate, there would need to be a high degree of understanding about the specific uses to which the information will be put. This is likely to involve further discussion with advocates of country-by-country reporting and other interested parties, and dialogue between the Commission and the SEC over the approach to be taken to implementing new US legislative requirements. As one example, the Commission might specify that certain EU companies will have to disclose certain types of payment to overseas governments through annual electronic filings, allowing the information thus disclosed to be aggregated and published.

(iii) this transparency requirement in the context of corporate social responsibility

We welcome the high quality of the wide range of disaggregated information disclosed voluntarily by some companies in the narrative section of their annual report, in independent corporate social responsibility reports and through their websites and other corporate publications. We support the continued development of such reporting. However, we feel that mandating a specific presentation in the annual report would be counter-productive. Prescriptive requirements for narrative information are likely to be responded to by boiler-plate disclosures and could even precipitate a 'race to the bottom' where such generic boiler-plate displaces the positive efforts made by some companies to provide useful, tailored information.

(iv) any possible negative consequences for the EU economy (e.g. impact on security of energy supply in the EU; competitive disadvantages for EU companies which may be disclosing commercially sensitive information, increased reporting costs)

The threats to national and to EU competitiveness from excessive regulation cannot be overstated. Markets benefit from sensible and measured regulatory frameworks that provide the information and protection that investors require. Where these frameworks are effective and proportionate they can be a source of competitive advantage to the market in question. We do not believe current proposals for mandatory disaggregation on a country-by-country basis would be a positive addition to this framework. IFRS already requires country specific disclosure where the resulting numbers are material, and we do not believe that an extension of this requirement into areas of lower materiality will provide information that is useful to investors.

We also note that different disclosure requirements from different jurisdictions covering the same area is a great source of confusion for both those preparing and those using the information. If the EU is to pursue disclosure by individual companies in this area, it would be helpful to participate in a single global initiative to develop a methodology to create meaningful and cost-effective reporting.

(v) any possible positive/negative repercussions for corporate governance as a consequence of applying higher transparency standards.

We have no comments at this time.

2. Would the disclosure of financial information on a country-by-country basis by multinational companies be meaningful to investors of the company concerned? Please explain.

We are very doubtful that this would be the case. The Framework for IFRS establishes investors and other capital providers as the primary users of financial statements. We support this, in the interests of good financial reporting. This focus avoids the obfuscation of financial information through attempts to meet in full the many disparate and potentially-conflicting information needs of other user groups. This allows financial reports to be produced which contain clear, transparent and comparable financial information, focussed on investors but able to meet the primary information needs of a wide range of users.

In replying to this question, please consider:

(i) whether there are risks inherent to multinational companies' activities that could be identified through the disclosure of financial information on a country-by-country basis

We question the value to investors of much of the proposed country-specific information; to the extent that it relates to taxation, the level of detail proposed is likely to be excessive for the purposes of economic decision-making. Information relating to revenue and profitability is already adequately disclosed in accordance with IFRS 8 *Operating Segments*. Country specific information could be of interest to investors where it is material, but such disclosures are already required by paragraph 33 of IFRS 8 both for revenue from customers and for assets. This information, coupled with the existing requirements for management commentary, should generally be adequate for an assessment of country specific risk and we would question the value to investors of country specific information at a more detailed level.

(ii) any possible positive/negative repercussions for corporate governance as a consequence of applying higher transparency standards. If yes, please specify the type of financial information that would be useful (e.g. intra-group transactions, turnover, pre-tax profit, tax expenses on a country-by-country basis, etc.), for which purpose, and how such disclosure could help in achieving the objective of being meaningful to investors. Please consider whether additional specific information would be needed for companies operating in certain sectors (e.g. financial services, extractive industry, other)

Disclosure does not change the responsibilities of directors under company law and other regulations, and therefore it is difficult at this stage to see what effect the mandation of country specific disclosures in the financial statements could have on corporate governance.

3. Would the disclosure of financial information on a country-by-country basis by multinational companies be useful for the purposes of improving tax governance at a global level? Please explain the type of financial information that would be useful (e.g. intra-group transactions, turnover, pre-tax profit, tax expenses on a country-by-country basis, etc.), and how such disclosure could help in achieving the objective.

This may well be the case, although as explained above we do not believe that general purpose financial statements represent an appropriate vehicle for the achievement of global tax governance objectives.

Financial statements already contain sufficient tax disclosures to meet the needs of investors and we question the need for the inclusion of further such disclosures within this document. Requirements beyond this that are for other public policy objectives and should be disclosed through other means. They otherwise risk obscuring messages to investors.

4. Would the disclosure of financial information on a country-by-country basis by multinational companies active in the extractive sector (e.g. minerals, oil, natural gas, etc.) be useful in order to improve domestic accountability and governance in natural resource-rich third countries? As defined in the IASB Discussion Paper DP/2010/1 on Extractive Activities (April 2010): "Exploring for and finding minerals, oil and natural gas deposits, developing those deposits and extracting the minerals, oil and natural gas. These are referred to as extractive activities or, alternatively, as upstream activities. Minerals, oil and natural gas are non-regenerative natural resources. In other words, they cannot be replaced in their original state after extraction. Minerals are naturally occurring materials in or on the earth's crust that include metallic ores (such as copper, gold, silver, iron, nickel, lead and zinc), other industrial minerals (non-metallic minerals and aggregates), gemstones, uranium and fossilised organic material (coal). Oil and natural gas, often referred to collectively as petroleum, can be defined as a naturally occurring mixture consisting of hydrocarbons in the gaseous, liquid or solid phase (such as tar sands or oil shale).

Please explain the type of financial information that would be useful (e.g. intra-group transactions, turnover, payments to governments, pre-tax profit, tax expenses on a country-by-country basis, etc.), other narrative information on activities rather than figures, and how such disclosure could help in achieving the objective.

This may well be the case, and we support the efforts made by many to improve domestic accountability and governance in resource rich countries. However, while the emergence of a well-regarded, operative and widely adopted set of international accounting standards marks a significant mile-stone in this process of improving transparency, we have explained above our doubts about the appropriateness of mandating country-by-country disclosures within general purpose financial statements prepared primarily to meet the information needs of investors. As noted above, requirements beyond this that are for other public policy objectives should be disclosed through other means. They otherwise risk obscuring messages to investors.

5. Would it be useful if financial information on a country-by-country basis by multinational companies would be presented according to predefined standards or formats? Please explain.

No. As explained above, we do not believe that mandating the presentation of these disclosures within the financial statements will meet the information needs of investors. They should not be included within an international accounting standard. Adoption by local authorities of something less than the full and unamended body of IFRS has been a major threat to the achievement of globally consistent financial reporting. Insertion into IFRS of detailed provisions motivated by the interests of public policy drivers other than investor needs is likely to provoke resistance in some quarters and may jeopardise global acceptance and increase local 'opt-outs' from full IFRS.

Such a reaction may - perversely - result in a reduction in transparency and comparability.

In replying to this question, please consider, in the absence of existing international accounting standards on this issue:

(i) how could this objective be achieved (e.g. disclosure in the annual management report

We agree that, where material, country specific risk should form part of the risk disclosures that management make as part of their narrative reporting. This risk-focused approach provides information that is useful to users of the financial statements and is likely to be a significantly more cost effective approach than mandating disclosure in a specified way or to a pre-set level of detail. We do not support the publication of standardised lists or, even worse, templates for the contents of narrative reports. Narrative reporting is by its nature bespoke to the individual company which is reporting; requiring the inclusion of standardised narrative information within such reports is likely to be met by generic, 'boiler-plate' disclosures that contain little information of interest.

Perversely, such a process may actually reduce the quality of narrative reports as market pressure could cause good reporting to be driven out by bad.

(ii) at what level should the data be comparable (e.g. at the level of the multinational "company", for the benefit of investors; at the level of the "country", for the benefit of other stakeholders; other?)

As we have set-out above, we believe that country specific information is of interest to investors to the extent that it is material, and that where this is the case such disclosures are already required by IFRS. We do not see any benefit in comparability for information that falls outside of this materiality threshold as investors are unlikely to be interested in using it to draw any comparison.

(iii) who could prepare any common reporting format of this kind (e.g. the IASB, ESMA, the OECD) and what would be the advantages of the latter bodies compared to the IASB.

The IASB is a well-regarded international organisation with a mandate for the production of accounting standards and an established due process to ensure that these are well considered and operable in practice. We understand that the IASB is aware of the issues surrounding country-by-country reporting and is considering whether to extend the requirement for country specific disclosure within international accounting standards. Within this context we do not see the need for any other organisation to independently pursue this specific corporate reporting topic.

6. If country-by-country reporting were to be considered useful, what kind of multinational companies would usefully be targeted? Please explain. In replying to this question, please consider some of the following issues: (i) the benefits that disclosure by all companies may bring; (ii) the compliance cost; (iii) the extent of a company's activities in third countries (if limited extent, disclosing financial information may be prejudicial to the business position of the company); and (iv) the possible consequences for the competitiveness of EU capital markets.

As explained above, we do not agree that these disclosures should be mandated.

.7. Please provide information on the cost that you estimate that the introduction of country-by-country disclosure requirements could entail.

Costs are likely to be significant. Company accounting systems and internal reporting structures may not be set-up to report information in this way. Changes may therefore need to be made specifically in order to facilitate the production of this information, which could include the development of new software, the hiring of additional accounting resource, or both. If the data is to be used, there are also likely to be significant costs in understanding and analysing the data to create meaningful information that could influence users' economic or other decisions. The cost of any requirement for the information to be audited or subject to some other form of assurance would also need to be taken into account.