

Ministry of Finance

Sent by e-mail to: postmottak@fin.dep.no,

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Dear Sirs,

Consultation on amendments to the Regulations relating to Country-by-Country Reporting. Comments from PWYP Norway

PWYP Norway refers to the consultation paper from the Ministry of Finance on amendments to the Regulations relating to Country-by-Country Reporting, published on 30 September 2016, with 25 November 2016 as the deadline for submitting consultative comments, and we will in this letter outline our comments.¹

The background to the consultation paper is a matter that has been examined very comprehensively for a decade, with a focus on establishing what level of tax revenues is actually raised from the extraction industry by countries endowed with major natural resources, as well as on identifying potential extraction industry tax avoidance by multinational enterprises. The main objective is to promote enhanced transparency for enterprises that gain access to non-renewable natural resources that are largely in government ownership.

The intention is to document tax proceeds and prevent undesirable tax planning, as this is highly detrimental because (1) society misses out on tax revenues intended to fund communal goods; (2) it represents a competitive disadvantage for enterprises that do not want to make use of such techniques; and (3) the accumulation of financial muscle in tax havens outside the open market is often converted into political leverage, whereby special interests (tax havens) are protected at the expense of communal interests (transparency).

The case concerns very simple requirements with regard to the Regulations:

1. **Which accounting figures shall be reported** to prevent undesirable tax planning?
2. **How shall accounting figures be reported** to prevent undesirable tax planning?

PWYP Norway's request for extended country-by-country reporting ("ECCR") encompasses the following:

1. Audited accounting figures for investment, production, income, costs and tax to be reported for all countries.

¹ <https://www.regjeringen.no/no/dokumenter/horing-om-endringer-i-forskrift-om-land-for-land-rapportering/id2513274/>

2. Audited accounting figures to be reported in notes to the annual financial statement.

Knowledge production in PWYP Norway has demonstrated how leakages happen, how sophisticated audit and legal skills facilitate avoidance and which mechanisms may serve to address which leakages. Extended country-by-country reporting is the measure best tailored for averting undesirable tax planning.

It is necessary to point out that the Ministry of Finance has over the last decade generally been proposing wordings that deviate from the above, and a set-up that is not suited for highlighting undesirable tax planning.

The only novel aspect of leakages such as the Panama Papers, the Lux Leakages and other revelations is that the use made of tax havens by multinational enterprises, wealthy individuals and politicians has been exposed to the general public. In addition, it is generally known how multinational enterprises fund extensive lobbying to block legislation that may contribute to greater transparency.

Norwegian politicians have said that tax avoidance is undesirable, but the Government's inadequate follow-up of the legislative proposal on extended country-by-country reporting ("ECCR"), which may avert undesirable tax planning, has demonstrated how unwilling the Government and the Ministry of Finance are to introduce a set of regulations that may work as intended.

The Government's inadequate follow-up resulted in the Storting as a whole adopting, on 19 June 2015, a petition resolution no. 792 (2014-2015) because the existing regulations under the Accounting Act were not suited to highlighting undesirable tax planning:

"The Storting is requesting the Government to review the effects of the Regulations relating to CCR Reporting as measured against the Storting's objective of highlighting undesirable tax planning and ensuring that relevant information relating to CCR reporting from subsidiaries and support functions in third countries be disclosed in the financial statement² and³ []".

PWYP Norway refers to Proposition No. 1 (2015-2016) to the Storting (p. 51), where it

² The Storting's petition resolution: <http://www.publishwhatyoupay.no/nb/node/16780> and on the Storting's own website: <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Lose-forslag/?p=61783>. The resolution was adopted on 19 June 2015 upon the deliberation of Report No. 2 (2014–2015) to the Storting, Audited National Budget for 2015, Proposition No. 119 (2014–2015) to the Storting, Supplementary Appropriations and Reordering of Priorities in the Fiscal Budget for 2015, Proposition No. 119 (2014–2015) to the Storting, Amendments to the Tax and Customs Legislation, and the related Recommendation No. 360 (2014–2015) to the Storting. The Ministry of Finance has, inter alia, in Proposition No. 1 (2015–2016) to the Storting, quoted at the bottom of page 2 of the consultation paper (note: our page reference since the consultation paper does not include page reference) [].

³ The Storting also requested the Government "to examine how to establish supervision of accounting entities falling within the scope of the CCR regulation." Supervisory responsibility is assigned to the Financial Supervisory Authority of Norway, and PWYP Norway supported this solution: <http://www.publishwhatyoupay.no/nb/node/16889>

is stated that the “Ministry of Finance will in the autumn of 2016 be circulating, for consultation, proposed amendments to the CCR Regulations to ensure reporting as mentioned above”,⁴ and that the “Ministry of Finance will, against the background of such consultation, determine the actual amendments to the Regulations.”⁵

However, the Ministry of Finance itself states in its consultation paper that it has only circulated for consultation a proposal for “**certain amendments**” to the Regulations of 20 December 2013 No. 1682 relating to Country-by-Country Reporting (“CCR”).

Moreover, the Ministry of Finance goes on to state that the Ministry is in this consultation paper only following up on “**parts of**” the Storting’s petition resolution no. 792 (2014-2015), and that it is starting out from the [European Commission’s proposal](#) for amendments to the EU consolidated financial reporting directive (2013/34/EU).

The consultation paper includes certain distinct improvements, but such improvements are obliterated in the same consultation paper through the imposition of restrictions and the use of words and expressions that offer ample scope for circumvention thereof.

PWYP Norway is therefore of the view that the Storting’s petition resolution no. 792 (2014-2015), on the highlighting of undesirable tax planning, has still not been adequately followed up in this consultation paper, and that the proposal is, until the weaknesses have been remedied, not in compliance with the Storting’s petition resolution; see, in particular, the section on «support functions in third countries».

This implies that it is not correct that the Ministry of Finance has, in its proposal as outlined in the consultation paper, followed up on the Storting’s petition resolution. It is therefore a matter of serious concern that the Ministry of Finance is stating that it will adopt the actual regulations on the basis of such proposal, in its current wording.

As these provisions take the form of administrative regulations, it means that this matter will not automatically be brought before the Storting, thus enabling the Storting to examine whether the Storting has been provided with what it requested. It may seem as if the Ministry of Finance is thereby seeking to have the matter “signed off”.

PWYP Norway notes that the Standing Committee on Scrutiny and Constitutional Affairs is already aware of the matter. On 1 April 2016, the Standing Committee on Finance and Economic Affairs sent a notice on follow-up of the Storting’s petition resolution. The chairperson of the Standing Committee on Finance and Economic Affairs, Hans Olav Syversen, stated the following at the time: “We, as a committee, have filed a notice on follow-up of the petition resolution. Said notice is an expression of our impatience, in the form of a letter to the Standing Committee on Scrutiny and Constitutional Affairs. We request that this be conveyed to the Government, and that this be accorded priority. This is

⁴ <https://www.regjeringen.no/no/dokumenter/prop.-1-s-fin-20162017/id2513860/sec2>

⁵ <https://www.regjeringen.no/no/dokumenter/prop.-1-s-fin-20162017/id2513860/sec2>

not a step the committee resorts to in the ordinary course of proceedings.”⁶

Of 192 matters brought before the Storting’s Standing Committee on Scrutiny and Constitutional Affairs, the matter relating to country-by-country reporting (“CCR”) under the Accounting Act was identified as being of particular importance. The spokesperson for the Standing Committee on Scrutiny and Constitutional Affairs, Gunvor Eldegard, stated the following at the time: *“We, as the Standing Committee on Scrutiny and Constitutional Affairs, refer to this [the follow-up from the Standing Committee on Finance and Economic Affairs], and we await feedback from the Ministry, which has announced that it will revert on how to follow up on the resolution.”*

PWYP Norway therefore gives notice that the proposals in the consultation paper from the Ministry of Finance, in their current form, have failed to follow up on the Storting’s petition resolution.

⁶ Read the article in the newspaper *Vårt Land*: <http://www.vl.no/html/vl/pay/step1.html>

Detailed comments:

1 Positive improvements:

1.1 PWYP Norway's observations are correctly presented to a reasonable degree, apart from the purpose of reporting on ALL subsidiaries.

The Ministry of Finance notes in its consultation paper that the consultative proposal includes *elements* from proposals submitted by civil society, including Publish What You Pay Norway ("PWYP Norway")⁷.

PWYP Norway appreciates that the Ministry of Finance has acknowledged a number of PWYP Norway's arguments and that PWYP Norway's observations are correctly presented to a reasonable degree.

1.2 The consultation paper distinguishes between the OECD's "CCR for tax purposes" and "extended CCR under the Accounting Act".

Assessment: The Ministry of Finance is now making a much clearer distinction in its communications between the OECD's BEPS reporting (termed "country-by-country reporting for tax purposes"), which is addressed to the tax authorities, and extended country-by-country reporting (termed "country-by-country reporting under the Accounting Act") (for upstream companies), which is following up on the legislation in the US and the EU. It is a positive improvement that the Ministry of Finance is making a clear distinction between the two different processes in *most* of the consultation paper.

However, the Ministry of Finance is again confusing the two processes (discussed under Item 3 below) when the Ministry of Finance states that the OECD's BEPS information, termed "CCR for tax purposes", as published in the European Commission's directive proposal, is "good enough" to comply with the Storting's petition resolution for highlighting of potential undesirable tax planning.

It would appear that the Ministry of Finance is thereby seeking to "sign off on the matter" by referring to the OECD's BEPS measures, as evidenced by the following statement made by the Ministry under Item 5, Sub-item 6: *"It is noted that the disclosure requirements under the directive serve the same purpose as the Storting would like to see strengthened, and that the information in question would appear to encompass several aspects of the activities that are of relevance for getting an overview of the activities and tax burden of a group, across various jurisdictions"*.

It is not correct that the OECD's BEPS measures are "good enough" and can be used to "sign off" on the Storting's petition resolution on "highlighting undesirable tax planning and ensuring that relevant information relating to CCR reporting from subsidiaries and support functions in third countries be disclosed in the financial statement".

⁷ <https://www.regjeringen.no/contentassets/5181c306504e4bd18031b327d5034a31/hoeringsnotat.pdf>

PWYP Norway noted, on 9 December 2015, that BEPS and ECCR are two completely different processes, based on two completely different underlying transparency and disclosure requirements, which consequently will have two completely different implications in terms of what transparency and disclosure is available to the public sector. This is because the requirements under the OECD's BEPS measures (termed "CCR for tax purposes"), which form part of the follow-up of the OECD's BEPS⁸ recommendations, are based on completely different underlying data than are the public country-by-country reporting requirements under the Accounting Act and the Securities Trading Act ("CCR for accounting purposes").

PWYP Norway noted, in the consultative round on the OECD's BEPS reporting ("country-by-country reporting for tax purposes") (deadline for submitting consultative comments: 26 January 2016), that the absence of elementary and important transparency principles make the OECD's BEPS measures unsuited and irrelevant as an instrument, as these do not bring about the information necessary for such purposes.

Briefly summarised, the OECD's BEPS reporting ("country-by-country reporting for tax purposes") is closed reporting which will be produced too late, and which is inadequate because it is based on incidental sources, thus making it not comparable across company groups. It does not take account of the scope for manipulation, and there is doubt as to the reliability of its sources. PWYP Norway noted, in our consultative feedback, that the OECD's BEPS reporting ("country-by-country reporting for tax purposes"):

- does not require accounting figures;
- may omit groups;
- is not comparable across groups;
- is not comparable across countries;
- provides the information too late;
- is subject to limitations as to the conditions and work for which the information can be provided; developing countries will have to attempt to gain access to the information on their own;
- offer wide scope for exemptions and manipulation;
- cannot be used for anything other than a rough "risk assessment";
- does not take account of the scope for manipulation.

The present consultation was intended to address country-by-country reporting for accounting purposes, which can be enhanced into extended country-by-country reporting ("ECCR"). Extended country-by-country reporting does not suffer from the said weaknesses, and will therefore comply with the Storting's petition resolution for "country-by-country reporting for accounting purposes", because:

- the sources underpinning the report are always audited accounting figures;
- company groups cannot be excluded;
- full costs are reported by country, thus making it possible to observe how both income and costs are distributed across countries;

⁸ <http://www.vl.no/nyhet/synes-siv-jensen-somler-1.484598>

- all countries have to be included, including secrecy jurisdictions ("tax havens");
- the key details are reported in notes to the annual financial statement and disclosed in complete transparency;
- the information is reported precisely and automatically, and can be used for "risk assessment" purposes to a significantly greater extent than BEPS because the information is standardised and quality assured across enterprises, countries and time periods;
- there is no scope for exemptions or manipulation.

Recommendation: It is **important to distinguish between the OECD's BEPS measures ("CCR for tax purposes"), which are regulated in the Tax Assessment Act and concern information addressed to the tax authorities, and "CCR for accounting purposes", which is regulated in the Accounting Act and the Securities Trading Act.** A sharp distinction should be made between the process associated with the OECD's BEPS proposal on "CCR for tax purposes" and "CCR under the Accounting Act".

The Storting's petition resolution of 19 June 2015 (No. 792 (2014-2015)) is premised on "CCR under the Accounting Act". The Storting's petition resolution and PWYP Norway's proposal on extended country-by-country reporting are based on the existing Regulations relating to Country-by-Country Reporting pursuant to Section 3-3d of the Accounting Act. It is the Regulations under the Accounting Act that need to be amended such as to bring about disclosure of the relevant information in the financial statement, thus highlighting potential undesirable tax planning.

1.3 Not expensive or burdensome: Both the Ministry of Finance and the EU have abandoned the position that the reporting would entail special financial or administrative burdens for enterprises. This is a major change in the perspective of the authorities, and it is encouraging.

This is in conformity with knowledge accumulated by PWYP Norway, as well as with studies carried out by the EU itself and surveys of 200 companies conducted by Transparency International, examining whether publication of such information affected the competitive position of companies. Briefly summarised, it was found to have no negative impact in terms of competitive position. On the contrary, 43% of companies believed that it had improved their competitive position.

PWYP Norway appreciates that the Ministry of Finance has acknowledged this.

1.4 The information is available: The Ministry of Finance has accepted and acknowledged that the information is, to a large extent, already available to companies via their annual financial statement reporting. This is a major change in the perspective of the authorities, and it is highly encouraging.

PWYP Norway appreciates that the Ministry of Finance has acknowledged this.

1.5 **Separate report available for five years: Companies must in their annual reports specify *where* the CCR report is published and the report must be available for a *minimum of 5 years*.**

Assessment: This represents some element of improvement over earlier proposals, which only required separate reporting. PWYP Norway then demonstrated, by using data available from Statoil's CCR report, that Statoil had mixed downstream figures into upstream figure reporting, thus arguing that such reporting was not transparent.⁹ This gave rise to media attention and discussion in the Storting. The use of data and the attention this received caused Statoil to change its reporting for the subsequent financial year.

A separate report may be of independent value in itself, but it is important to note that what the Ministry of Finance is proposing is not the consolidated financial statement, with its attendant liabilities and scope for sanctions.

This implies that this apparent positive improvement needs to be considered from the perspective of the even simpler way of solving this, as proposed by PWYP Norway as part of the requirement for extended country-by-country reporting ("ECCR"): That companies shall disclose the relevant information in the form of notes to the annual financial statement. This is indisputably the simplest, cheapest and most effective way of implementing the reporting obligation.

An annual financial statement has already been established as the normal format for reporting by businesses in Norway. It uses audited accounting figures. It is cost effective because companies already hold such information in their accounting systems. This is the information wanted by investors, analysts and civil society.

There is still a major difference between having a separate report in which figures are reported and including such figures in notes to the financial statement, and thereby incorporating said figures in the audited financial statement. Auditors currently audit such figures for consolidated reporting purposes and for tax purposes for the parent company, but do not audit whether the figures in the CCR report are in conformity with the annual financial statement. This would automatically be done if the CCR reporting took the form of notes to the financial statement. Consequently, there still remains, despite the enhancement, a key regulatory weakness, which may in future turn out to be fatal as far as the correctness of the figures is concerned. Only a small minority of readers of the CCR report will be conscious of the reasons why figures deviate from the annual financial statement. Auditors will under any circumstance audit the consolidated financial statement, so by including the figures in notes one will automatically benefit from the existing audit. This will obliterate any need for a new audit if such requirement were to be introduced in future.

⁹Downstream figures contaminate upstream figures:
<http://www.publishwhatyoupay.no/nb/node/16717>

The "alternative" approach proposed by the Ministry of Finance in its attempted "solution" to such reporting, under which companies are required to specify *where* the CCR report is published and to keep such report available for a *minimum of 5 years*, is nothing more than a copy of the European Commission's proposal as to how the EU shall publish the OECD's BEPS reporting for tax purposes ("CCR for tax purposes"), and has nothing to do with extended country-by-country reporting, cf., *inter alia*, the difference in timing between these two forms of reporting. The reason for this is that the underlying data on which the OECD reporting is based allow companies to prepare, in practice, completely separate accounts for this purpose if they thus prefer.

In this regard, the Ministry of Finance again ends up confusing the two reporting purposes. The proposed solution is perfectly viable for OECD's BEPS information, which is to be addressed to the tax authorities (termed "country-by-country reporting for tax purposes"), but does not meet the requirement for extended country-by-country reporting. This aspect should therefore be strengthened.

Statoil showed in its first CCR reporting that the separately prepared CCR report could be compressed into one page when set out in Statoil's sustainability report. If an extended country-by-country report can be compressed into one page in the sustainability report, the same can be done in notes to the financial statement.

1.6 Clear preliminary demarcation:

Assessment: The Regulations still apply to both accounting entities and issuers of listed securities.

Recommendation: PWYP Norway believes that it is prudent to prioritise efforts to ensure that the regulations will work, rather than expanding the scope of poor regulations that are not fit for purpose to encompass all sectors.

We believe, at the same time, that it is laudable that expansion of the scope of the reporting obligation is on the cards in the context of the evaluation of the CCR provisions, as announced in Legislative Proposition No. 1 to the Storting, Part 1, Chapter 4.7 (2013-2014), but the Storting should first ensure, as noted, that we have a set of regulations that are fit for purpose. We do not have that at present.

1.7 All costs: The Ministry of Finance is proposing, for the first time, that the report shall include information about the «costs» of the enterprise, as opposed to the current requirement for reporting on «purchases of goods and services».

Assessment: This will imply that the report needs to include information on the full costs of the enterprise, which may be better suited to presenting any payments made by the enterprise to governments, as well as the tax affairs of the enterprise, in a broader context (final paragraph, page 11, our page reference).

PWYP Norway appreciates that the Ministry of Finance has acknowledged the importance of highlighting the full costs.

PWYP Norway believes that this is by far the most important positive amendment in the consultative proposal from the Ministry of Finance, but the said positive improvement is unfortunately obliterated under Item 2.1 below.

It is also in conformity with the Accounting Act for the report to include other information than payments to governments only.

Recommendation: The said improvement should not be completely obliterated by limitations and a broad scope for circumvention as outlined under Item 2.1 below.

2 Negative statements obliterating positive improvements:

2.1 The duty to disclose information is linked to tax payments. This is a problem, because when the duty to disclose information is made conditional on companies making tax payments in the relevant jurisdiction, it will in practice mean that tax havens are protected and that other disclosure requirements are obliterated.

Assessment: Section 4 of the Regulations includes the following statement: (page 16, final paragraph): *«When there is a duty to disclose information concerning payments to governments [PWYP comment: in countries with tax payments in excess of NOK 800,000] the report shall also [PWYP Norway comments: no tax, no reporting obligation] include information on the investment, sales income, production volume and costs of the enterprise, specified by each of the countries in which the enterprise is engaged in activities.»*

The wording from the Ministry of Finance is crystal clear: The duty to report investment, sales income, production volume and costs is limited to those countries where the company is obliged to report payments to the authorities.

This means, since tax payments are not made to tax havens, that the Ministry of Finance is still shielding tax havens from a requirement for companies to disclose information from such jurisdictions in their reporting.

This is noteworthy, in view of how clearly civil society and the Storting have expressed the importance of gaining control over information, also in third countries where support functions that may conceal corruption, money laundering and capital flight are performed; see, *inter alia*, the final part of the Storting's petition.

Recommendation: In order to identify where tax is paid and where tax is not paid, investment, sales income, production volume and costs MUST be reported for ALL countries which are included in the extraction production chain, or which provide group services for the extraction activities, thereby making it clear whether or not the company has reported tax payments to such countries. Nothing else will work.

Section 5, Sub-section 3, letter e, of the consultation paper (reporting of net sales) is not adequate for purposes of uncovering the specific in-country activities in accordance with how the information is incorporated into the consolidated report (which would make it was necessary for the company to explain any deviations from the annual financial statement, but it does not need to do so because this provision is linked to the provision governing the reporting of investment, production, income, costs, tax details, etc.). The wording below is therefore more suitable for purposes of requiring companies to actually report both income and costs, as well as all other details, for all countries that are involved in, or support, their extraction activities.

The wording should have been as follows: ***«The report shall include information on the investment, production volume, sales income and associated costs of the enterprise, taxes payable for the financial year in the income statement, as well as payable tax carried forward from previous financial years as at 1 January and payable tax carried forward to subsequent financial years as at 31 December, specified by each of the countries in which the enterprise is engaged in activities, including countries with support functions for the extraction activities».***

It is of key importance for this aspect to be remedied in order for the Regulations to work as intended. Part of the purpose behind the Regulations will be forfeited unless these are thus remedied.

2.2 Subsidiaries can still be omitted:

Assessment: In Section 5 of the Regulations, as proposed in the consultation paper, the company may exempt subsidiaries from the reporting if the parent company is prevented, through serious and persistent restrictions, from exercising its rights over the subsidiary OR if information cannot be obtained within a reasonable period of time or without disproportionate costs. This is an extremely lax approach to exemptions.

In practice, the consultation paper is proposing a situation in which it will be up to companies themselves to determine whether relevant information relating to

subsidiaries and support functions in third countries shall be disclosed as part of the reporting, and in which it is largely up to each company to choose whether to use accounting figures, and companies may also choose to exclude companies from reporting if it becomes too «bothersome and cumbersome» to report (they do not have the necessary authority over the subsidiary (!) to obtain the figures or it takes too long time (!) or it is too costly (!)). The implication is that companies may choose whether or not to report tax havens. From a financial perspective, this proposal is entirely unsuited for purposes of highlighting undesirable tax planning, thereby depriving, *inter alia*, company investors of opportunities for (1) opting out of investment in companies with which one would not like to be associated; or (2) influencing companies to change their conduct with regard to the use of tax havens.

If a company invokes such circumstances it should, at a minimum, explain which subsidiary or subsidiaries is/are affected, which restrictions result in incomplete reporting and/or what is the reason why such information cannot be obtained within a reasonable period of time/without disproportionately high costs, although corresponding reporting is necessary to issue the consolidated financial statement.

PWYP Norway would like to note, in this context, that it follows from Article 102 of the EEA Agreement that the EEA Joint Committee shall "take a decision concerning an amendment of an Annex" and from Article 93 that the EEA Joint committee shall take decisions "(...) by agreement between the Community, on the one hand, and the EFTA States speaking with one voice, on the other." Consequently, it is possible to request specific modifications or to altogether exclude application of a directive which is met with political opposition internally in Norway. The special modifications are typically of a technical nature, but may also pertain to the substance of the directive, although the EU's threshold for accepting this is high. There will from time to time be political controversy in an EFTA state as to whether a new legislative act should be incorporated into the EEA Agreement at all. The EEA Agreement allows for a «right of veto» or a «right of reservation». There have been numerous and ever more frequent discussions about «reservation» in the Norwegian political discourse. There is at virtually all times some debate or another concerning exercise of the right to make reservations. Discussions relating to the Services Directive were lengthy, whilst the Data Retention Directive was approved in the Storting by a relatively narrow majority in April 2011. The Labour Party passed, around the same time, a party conference resolution calling for reservation against application of the third EU Postal Services Directive.

Recommendation: Section 5, Sub-section 1, should therefore be supplemented as follows: «To the extent that a company invokes Section 5, Sub-section 1, letters a or b, it shall be specified which subsidiary or subsidiaries is/are affected, what is the reason for omitting such reporting and which measures the company are taking to remedy the matter, for example reporting in reports for subsequent years.»

2.3 Only some audited figures

Assessment: The Ministry of Finance proposes that only "some of the disclosure requirements under the CCR provisions should be accommodated by information from the annual financial statements of reporting entities".

PWYP Norway is of the view that this is vague! The financial statement should be the obvious source of *all* figures. It is meaningless for companies to use other figures than those which they have gathered and presented to their auditors, and which have formed the basis for their audit. After all, investment needs to be in conformity with the financial statement, production needs to be in conformity with the production underpinning income as recorded in the financial statement, income needs to be in conformity with the financial statement, costs need to be in conformity with the financial statement, taxes need to be in conformity with taxes in the financial statement (taxes in the income statement + deferred tax as at 1 January – deferred tax as at 31 December = taxes paid this year!). It makes no sense not to have links to the financial statement for all variables.

Recommendation: It is of key importance for this aspect to be remedied in order for the Regulations to work as intended.

2.4 The CCR reporting is not included in notes to the financial statement.

Assessment: The Ministry of Finance proposes to apply the EU proposal for publication of the OECD's "CCR for tax purposes", which incorporates specification of the place of publication and the period of availability (5 years). This is an improvement to the Regulations, but must be considered from the perspective that the liabilities and the scope for sanctions associated with the annual financial statement are abandoned when companies may engage in separate reporting, and it offers nothing remotely as robust and simple as extended country-by-country reporting in notes to the financial statement (see Item 1.5 above).

(1) It is important to improve the quality of the accounting materials of business entities. It facilitates more correct calculation and collection of taxes, it enhances the effectiveness of efforts by the tax authorities and the police, it improves the fairness of business competition, and it may inhibit accounting- and bookkeeping-related white collar crime. Owners, directors and general managers should be aware of the change in how the authorities deal with such matters.

It now takes less for non-compliance with bookkeeping regulations to trigger criminal or other financial sanctions from the authorities, and the sanctions can also be much more severe than in the past. Since responsibility for compliance with company obligations lies with the directors and the general manager, and since any corporate criminal sanctions reduce the value of the company, it is owners, directors and/or general managers who have to foot the bill if the authorities find that the bookkeeping regulations have not been complied with.

(2) The audited financial statement of a company is where financial information can most logically and effectively be obtained from. The figures are readily available, in conformity with how companies report their consolidated accounts, as well as reliable.

Recommendation: PWYP Norway believes that the way in which the EU publishes the OECD's BEPS information should not underpin the introduction of extended country-by-country reporting requirements under the Accounting Act. If that were to happen, the OECD would prevent Norway from introducing transparency requirements that can work. The Ministry of Finance itself notes, in the top paragraph of page 11, that the annual financial statement will enhance credibility with regard to the correctness of the figures reported in the CCR reports.

The Ministry of Finance states, in the third paragraph of page 11, that the Ministry is proposing to introduce a new provision in the CCR Regulations setting out requirements as to the publication of the CCR report, under reference to a new Section 6 on publication. The Ministry of Finance is again confusing the OECD's BEPS proposal, termed "CCR for tax purposes", with extended CCR under the Accounting Act. It is perfectly legitimate for the Ministry of Finance to «reuse» the CCR Regulations under the Accounting Act/Securities Trading Act to include publication of the public portion of the BEPS reporting, but this should not be to the detriment of extended country-by-country reporting under the Accounting Act and the Securities Trading Act.

- 3 The Ministry of Finance states, on page 8, first and second paragraphs, that the OECD's BEPS information, termed "CCR for tax purposes", as published in the European Commission's directive proposal, will be "good enough" to comply with the Storting's petition resolution for highlighting potential undesirable tax planning.**

Assessment: Under Item 5, Sub-item 6, the Ministry of Finance states the following: *"It would appear, in the assessment of the Ministry, that the disclosure requirements proposed in the directive proposal are suited for accommodating the Storting's petition for ensuring that relevant disclosure requirements which may serve to highlight undesirable tax planning are included in the CCR report"*. The directive referred to is the European Commission's directive proposal of 12 April 2016 on public CCR for tax purposes (COM(2016) 198 final), which as noted concerns publication of the OECD's BEPS information, which is itself based on unreliable underlying data (see, yet again, Item 1.2 above).

PWYP Norway refers to previous consultative comments in which we have outlined the weaknesses and circumvention opportunities associated with the OECD's BEPS measures, and what will be the implications of this for society¹⁰.

The consultation paper includes certain distinct improvements, but such improvements are obliterated in the same consultation paper by using terms and expressions that offer ample scope for circumvention thereof. PWYP Norway has under Item 2 provided a detailed account of the weaknesses, some of which are major, that continue to be associated with the Regulations circulated for consultation, and how the Ministry of Finance is still using the OECD's BEPS reporting for tax purposes ("CCR for tax purposes") in a manner undermining the necessary transparency.

This pertains, in particular, to the scope for omitting to report on countries with support functions (due to no taxation, and thus no reporting), and the absence of any requirement for explanation or remedying measures if subsidiaries are, for some reason or another, not reported, but also the lack of incorporation into notes to the annual financial statement, which would have resulted in this being included in the audited financial information, where it appropriately belongs.

PWYP Norway therefore believes that the Storting's petition resolution no. 792 (2014-2015), on highlighting undesirable tax planning, has still not been adequately followed up in this consultation paper, and that the proposal will not comply with the Storting's petition resolution until, at a minimum, the weaknesses identified under Items 2.1, 2.2, 2.3 and 2.4 above have been remedied.

Recommendation: Extended country-by-country reporting of tax figures and related variables for accounting purposes is a prerequisite for the correct and transparent taxation of companies, and such reporting must apply to all

¹⁰ Consultative comments on "country-by-country reporting for tax purposes" (the OECD's BEPS initiative): <http://www.publishwhatyoupay.no/nb/node/16869>

subsidiaries in all countries, there must be a requirement for the reporting of accounting figures only, and there should be a requirement for reporting to only take place somewhere that is directly linked to the auditors' review of the company's financial figures (in notes to the annual financial statement). There is no prohibition under the financial reporting directive against incorporating ECCR into the annual financial statement.

In order for the Ministry of Finance to comply with the Storting's petition resolution, the Regulations should be worded as follows: *«In notes to the annual financial statement shall be presented, country by country,*

- (1) Investment*
- (2) Production*
- (3) Sales income*
- (4) Costs (purchases of goods and services, wages, other operating costs and net financial costs)*
- (5) Number of employees*
- (6) Tax liabilities payable as at 1 January*
- (7) Taxes payable for the year in the income statement*
- (8) Tax liabilities payable as at 31 December. Taxes paid (6 + 7 – 8) shall be broken down in accordance with [the breakdown under the EU directive]. The company may choose whether the breakdown shall be reported in a separate report or incorporated into the notes to the annual financial statement»*

Conclusion:

The basis for all taxation is information. It should be a source of concern for the Storting that the Ministry of Finance has consistently proposed, throughout the process of preparing provisions on country-by-country reporting for accounting purposes, a company reporting regime that is not suitable for highlighting undesirable tax planning.

The tax authorities and control bodies have limited resources at their command, and it is therefore very important to have tools enabling the authorities to make as precise risk assessments as possible for purposes of planning control activities. This has, indeed, been noted by the Ministry of Finance itself.¹¹ National audits can serve to increase public confidence in the public sector and improve the use of public funds.

Extended country-by-country reporting ("ECCR") will be optimal legislation for society's control bodies: Since the information will be in the public domain alongside and in connection with the remainder of the financial statement, said bodies can receive valuable input from the public sector, as well as from the media, researchers and organisations, for purposes of uncovering potential corruption, money laundering, tax avoidance or industrial crime.

¹¹ First paragraph, page 4:

https://www.regjeringen.no/contentassets/ea8248c4a11a4c8db806c5ef763e7cb5/15_1829_horin gsnotat-land-for-land-rapport.pdf

Extended country-by-country reporting will result in companies competing on equal terms, investors being able to trace their money, the underlying data being reliable, audited and auditor-approved accounting figures, thus providing us with financial reporting standards of a high quality, which are understandable, transparent and comparable, in the public interest.

Yours faithfully,



Mona Thowsen,
Secretary General,
PWYP Norway