The potential transparency benefits of public registration of statutory accounts of unlisted companies

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Background

- Task Force has been considering the issue of ‘country-by-country’ reporting since 2010
- 2011 report on the issues by a group chaired by Michael Devereux
- Issues agreed by that drafting group, but no consensus at Task Force meeting on way forward
- Some stakeholders wanted to explore the potential value of public registration of local statutory accounts of unlisted companies

The report

- Sample of countries reviewed to consider current availability of accounts in developing countries
- Potential transparency benefits analysed
  - ‘Holding to account’
  - Transfer pricing and international tax risk assessment
- Business and NGO input

Current availability of accounts in developing countries

- Sample of 13 countries – 5 in Africa, 3 in Asia, 5 in South and Central America
- Not random – chosen for range of expected survey outcomes and range of country backgrounds
- Key question – Are private, unlisted companies required to file their accounts centrally for public inspection ?

Outline results

Yes – public filing and access – all companies	Access only to public companies	Central filing but no public access	No filing and no access
Madagascar	Botswana	Ecuador	Angola
Rwanda	Zambia	Cambodia*	Panama
Pakistan			
Philippines			
Colombia			
Jamaica			
Peru - soon			

*Cambodia introducing central filing but no decision yet on public access

Methodology

- Research using public data
- No governmental access
- PwC review

Data companies are required to file

- Balance sheet and profit and loss account – generally audited
- Cash flow statement (generally)
  - relevant for cash tax paid
- Details of shareholders and subsidiaries (coverage not consistent)
  - relevant for ownership/ independence

Public access and timing for filing

- Internet access (majority) as well as local access
- Costs of access generally small – less than US$10
- Timing for filing generally consistent with tax return deadline

Other countries

- Smaller sample of potential territories for affiliates of developing country companies

Yes – public filing and access – all companies	Central filing but no public access	No filing and no access
France	Mauritius	BVI (no accounts)
Spain		Switzerland

Transfer pricing comparables

- The OECD Transfer Pricing Guidelines require testing of a controlled transaction (a transaction between associated enterprises) for conformity with the arm's length principle by setting it against comparable uncontrolled transactions.
- A comparable uncontrolled transaction can be:
  - internal (a transaction by one party to the controlled transaction with a third party) or
  - external (a transaction between two independent enterprises neither of which is a party to the controlled transaction)
- Comparables should be public, not secret.

Transfer pricing comparables – potential benefit?

- A common source for external comparables is filed company accounts.
- Often accessed through commercial databases.
- Limited data available for developing countries.
- Having accounts publicly available in developing countries may provide more potential external comparables for developing countries.

Transfer pricing comparables – accounts required

- Accounts of independent companies are best

- Need accounts of companies in the developing country
  - or region

- So, additional data could be made available by implementing change locally

Risk assessment – potential benefit?

- Investigations are more focused and speedy if built on good risk assessment
- For example:
  - If Company A (developing country)
  - trades with
  - affiliate Company B (another country)
  - and there is an international tax risk assessment of Company A in developing country,
  - that assessment may be helped by an understanding of profits (and capitalisation, asset base, etc.) of Company B

Risk assessment - accounts

- Accounts of Company B may provide some useful information for this purpose
- There are various processes through which the developing country might access the accounts data
  - Request it from Company A
  - Request it under a TIEA or Tax Treaty
  - Obtain it through public access

Risk assessment – access to accounts

- Exchange of Information may not be a speedy way to access accounts
- Developing countries have limited TIEA and Tax Treaty networks
- Public access is likely to be immediate
- Tax administrations should be consulted for views on value of potential benefits

Would an increase in the information required in tax returns be an alternative to publicly available accounts data ?

- More detailed tax filing on related party transactions (e.g. US, Canada)
- Identifies significant related party transactions and may provide some other important information for assessing transfer pricing risks
- But does not provide an indication of relative profitability of parties
- Accounts could give that indication, at least at the company level
- So information from the tax return would supplement the accounts data –not substitute it.

‘Holding to account’- potential benefit?

- Campaigners looking for data by country on tax, profit, sales, purchases, financing, employees, assets
- Accounts give some of this data, but by company
- Therefore the data is likely to be of more value if company operates in only one country

‘Holding to account’ – Governments

- Tax: Only show information relating to income taxes, not royalties, not duties
  - Unless there is a cash flow statement, may not see cash tax paid
  - Not required to split by country*
- Therefore the data is likely to be of more value if company operates in only one country
- Lack of total tax figure is a material issue

* (assuming accounts prepared under IFRS)

‘Holding to account’ – companies (1)

- Profit, sales etc.: shown, but not split between local and foreign unless company has public share/debt issue*
- Related party transactions shown (but profit etc. not split unless public share/debt issue*)

- The data is likely to be of more value if company only operates in one country

* (assuming accounts prepared under IFRS)

‘Holding to account’ – companies (2)

- May provide indicative information on income taxes paid and enable high-level comparison of profit and tax
- Provides no explanation of relationship between the profit and tax
- May lead to questions, but does not provide answers
- Only indicative, so must be treated with care

Accounts filing requirements

- For an accounts filing obligation to be most successful for transparency purposes, we consider the following would be required.

- All companies file , except small, …
- … file BS, P&L, cash flow and ownership.
- Enforcement
- Internet filing and access
- Database providers authorised to process and on-supply
- Support for developing countries
  - Operation of filing and access
  - Use of accounts data

Costs of requiring public filing

- Potential benefits must be assessed against the costs (for business and government)
- Costs greatest in countries where audited accounts are not currently required – potential significant cost for business.
- Costs of maintaining public register and providing access fall on governments, unless passed on through charging.
- Impact on competition, takeover activity and public scrutiny of business also to be considered.

Preliminary conclusions

- Primary benefit that may arise from publicly available accounts data:
  - transfer pricing benefit for both taxpayers and tax administrations
  - by providing potential comparables, for which there is currently a significant gap in the developing world.

- May also provide some indicative data that may assist tax administrations in assessing the international tax risk of their taxpayers which belong to a MNE.

- Tax administrations should be consulted for views on value of potential benefits.
- Benefits must be assessed against costs (for business and governments). Full examination of costs needed - more in-depth work required.