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GRI response- Consultation on Multinational tax integrity and enhanced tax transparency

GRI would like to thank you for the opportunity to provide our feedback in this open, multi-stakeholder consultation. As providers of the world's most widely used Sustainability reporting standards, and the world's first global standard on comprehensive tax disclosure at the country-by-country level, we would like to commend you for taking forward this initiative, and we offer our support.

Whilst continuing increased mandated and voluntary sustainability reporting is certainly positive, according to research undertaken by the Principles for Responsible Investment (PRI), only a third of large and mid-sized companies globally have commitments or policies on tax transparency in place, compared to more than two thirds for climate and 98% for health and safety.

As we will set out in our below feedback, we believe that tax integrity and enhanced tax transparency serves a crucial role in global sustainable development, as well as improving the ability of investors and shareholders to adequately assess and manage risks, and also as a means for raising capital, and combating corruption and greenwashing.

GRI uptake

As a provider of the global best practice for impact reporting, our mission is to deliver the highest level of transparency for organizational impacts on the economy, the environment, and people. Standards. According to the 2020 KPMG Survey of Sustainability Reporting, GRI is the dominant sustainability reporting standard globally, however this is also the case in Australia, with the Australian supplement to the above reporting that 66% of ASX100 companies now report in accordance with the GRI framework, up from 42% in 2017. GRI 207, which supports public reporting of a company's business activities and payments within tax jurisdictions, as well as their approach to tax strategy and governance has been individually downloaded 24,183 times as of 29 August 2022, since its release in December 2019. Furthermore, downloads of the full package of the GRI Standards since 2019 (which includes GRI 207) is an additional 222,534 downloads.

1st September 2022

As a result of GRI's robust due process for Standards, GRI 207 was created with multi-stakeholder involvement from various constituencies, addressing the key needs of stakeholders including those typically seen from bench markers, rating agencies, policies, codes of conduct and more. The Standard is universal and applicable to all industries and sizes of companies. The Standard provides the option for total tax contribution reporting, so in fact goes beyond only corporate tax.

Despite the standard only being published as recently as 2019, coming into effect from January 2021, it has already been voluntarily adopted, primarily with large MNEs, such as Vodafone (Head of Tax was on the Technical Expert Committee of GRI 207,Wesfarmers ,Rio Tinto , Phillips, BHP, Enel, Credit Suisse, Deutsche Bank. Research that was undertaken on the usage of GRI 207 in the Nordics noted that there are increasing numbers of companies publicly reporting on their tax matters, but reporting varies in style or coverage, which is likely due to the voluntary nature of the reporting.

We have already seen demand from Business and Industry Associations, such as the International Council on Mining and Metals, which makes up 1/3 of the global industry, who require reporting with the GRI Standards for membership, and specifically commitment to either GRI 207-4, or an OECD BEPS file by 2025. Notably, membership includes the Minerals Council of Australia, and other companies headquartered in Australia, such as BHP, MMG, Newcrest Mining, South 32.

Recognition at the global level

Corporate tax transparency has been rising in significance in the global push for transparent and sustainable corporate behavior from consumers, government's, investors, and also at the global level of the UN. Both the UN Committee of Experts on International Cooperation in Tax Matters and the UN Development Project (UNDP) has also just recently set up and is developing a sustainable tax initiative, as part of the Sustainable Development Goals. Notably, the transparency elements of the widely shared civil society Draft UN Tax Convention which was published in March 2022 were drawn from GRI 207. The calls for tax transparency have also been extended to digital services, with the UN calling for a digital services tax provision to be included in the UN Tax Convention so that other countries can follow suit. Tax is also part of responsible investing, under UN Principles for Responsible Investment (PRI), which has large alignment with GRI 207.

As well as the EU's Directive on public country by country reporting, Tax integrity and tax transparency are included in the Social Taxonomy report, and in July 2022 the EU opened a public consultation on Tax evasion and aggressive tax planning. At the national level, the Disclosure of Tax Havens and Offshoring Act was introduced in the United States (US) as a bill in 2021. It directs the US Securities and Exchange Commission (SEC) to conform its regulations to existing standards for country-by-country reporting. This has been supported by investors with 2.9 trillion in assets. France has also moved forward with a tax on digital services, which would require companies such as Facebook and Google to pay tax on their revenue.

The need for tax transparency has also been recognized by the wider business community, as the World Economic Forum's Stakeholder Capitalism Metrics include tax as one of the 22 core metrics to report on (total taxes paid, total taxes collected, breakdown of corporate income tax paid for largest countries). Furthermore, The B-Team, a coalition of business leaders advocating sustainable business practices developing Responsible Tax Principles which, despite not being a reporting standard, set expectations for transparent reporting on companies' tax affairs and taxes paid.

As we saw in March 2022, the US SEC ruled against Amazon's attempt at throwing out the shareholder resolution on public county by country reporting, stating that this transcended ordinary business matters. The following AGM vote on whether or not Amazon would be required to report publicly with GRI 207 received 21% of independent shareholders votes. In 2014, according to securities filings, a similar resolution from Google's shareholders received only around 1% of the vote. Whilst the shareholders pushing for this did not win a majority, this demonstrated how rapidly the demand from shareholders is growing. Notably, similar shareholder proposals have since been filed for Cisco and Microsoft, also requesting public compliance with GRI 207.

Tax and Sustainable Development

It is estimated by the OECD that the Base Erosion and Profit Shifting (BEPS) practices cost countries $100–240 billion in lost revenues annually, which is the equivalent of 4-10 percent of the global corporate income tax revenues. This is the result of the abuse of gaps and inconsistencies between the tax systems of different countries. According to the most recent estimates from the International Centre for Tax and Development, total tax revenues account for more than 80 percent of total government revenue in about half of the countries in the world – and more than 50 percent in almost every country. This is also in line with the EU Tax Observatory, estimated global annual tax revenue losses are between $240 billion and $650 billion, who also pointed out that lower- and middle-income countries are most out-of-pocket relative to their gross domestic product.

Tax avoidance and lack of transparency exacerbates global inequalities, undermining sustainable development, as companies will often benefit from these tax regimes without providing proportionate contribution to the local economy through profit shifting practices. The High-Level Panel for International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (UN FACTI) reported a 20% to 30% global corporate tax on profits would *"help limit incentives against profit shifting, tax competition and a race to the bottom."*

As well as enabling redistribution of wealth, tax can finance public goods and services, amongst healthcare and education. Taking health as an example, Annually, governments lose between $500 billion and $650 billion in revenue from tax avoidance, researchers have found. Most of those losses are concentrated in middle- and lower-income countries across sub-Saharan Africa, Latin America, the Caribbean and South Asia. The report noted that governments without sufficient tax revenues weren't able to aggressively respond to Covid-19. For example, the report noted that in India, the money lost from tax avoidance could cover hospital treatments for 55 million people annually. In Germany, that money could pay for the installation of nearly 8,000 wind turbines, according to the report. It was reported that the digital services tax implemented in France on major tax companies brought in a total of €400 million in 2019.

Tax also plays an important role in *Peace, justice, and strong institutions* (SDG16) and *Partnership for the Goals* (SDG17), through for example modern tax policies, strong tax authorities, and good tax governance of corporates and institutions. Through modern fiscal policies (global, regional, national) and sustainable finance programs, tax has the potential to contribute to and enable sustainable development. Countries are able to demonstrate their commitment and contribution to meeting the 2030 Agenda, by delivering on the SDGs by using tax transparency as both a key disclosure, but also a metric for measuring and deciding responses.

Link between tax transparency and corruption

The ability of law enforcement, tax and other relevant authorities to have full access to accurate, verifiable and up to date information for inter-agency collaboration is critical to counter financial crime and corruption. Ensuring that companies tax policies, systems and practices are robust, requires application of good and robust governance and control mechanisms. Corruption and aggressive tax planning undermines the abilities of countries to achieve sustainable development, with the EU Sustainable Finance Technical Expert Group recognizing tax as a minimum safeguard, from strategy, responsible planning, governance to public country by country reporting.

Crucially, mandated transparency around country by country tax payments may also put the spotlight on other aggressive tax or lobbying practices by companies, money laundering etc, particularly if there is inter-agency collaboration. This will also act as a deterrent against practices such as corruption, tax avoidance aggressive tax planning and lobbying.

Addressing the Reporting burden

As already referenced, GRI has a multi-stakeholder driven standard setting process, and GRI 207 is already broadly aligned with the OECD's BEPs. Many large companies already report the underlying information that would support public by country reporting filings to competent authorities under OECD BEPS Action Item 13 on a confidential basis, and as research from UN PRI has shown, country by country reporting has the lowest proportion of reporting publicly. Furthermore, reporting with GRI 207 also enables companies to communicate their alignment with the UN Principles for Responsible Investment.

In order to ensure that reporting burden is not unnecessarily imposed on the companies that will fall under the scope of this initiative, we strongly recommend that this initiative is aligned as far as possible with global developments, and existing standards, guidelines, principles, and metrics, which also ensures comparability, which is important for all stakeholders, especially investors and regulators. Requiring a shift to public reporting for MNEs could act as a prompt for reporters to scale-up, improve automated systems and management systems etc.

What is certain is that a uniform approach is needed, given that we will be seeing increasing jurisdictions, regulators and investors bringing forward mandatory rules on tax transparency. For the companies who are already voluntarily reporting under the Australian Tax Code, it should be noted this has shown to be aligned heavily with GRI 207 already.

Investor and shareholder risks

As already mentioned, we are seeing increasing demands from investors and shareholders for information on company's tax matters, with recognition that reputational, legal and financial risks come with aggressive tax planning. However, lack of a mandated and uniformed system of public disclosure is preventing investors from measuring and managing their portfolio risks. Just last year, Norway's sovereign wealth fund dropped several investments due to lack of tax transparency. In their shareholders resolution for Amazon to report with GRI 207 it was stated by the proponents and supporters that by not disclosing revenues, profits, or tax payments in non-US markets, Amazon was presenting a challenge to investors' ability to evaluate the associated risks, the robustness of the business model, and whether Amazon is engaged in responsible tax practices that ensure long-term value creation for the company and the communities in which it operates.

Indeed, in 2019, Google agreed to pay almost €1 billion to the French Authorities to settle a dispute about its tax affairs, with the company being accused of failing to disclose parts of its activities in the country and thereby pay appropriate levels of tax.[1] In November 2020, a U.S. Tax Court ruled that Coca-Cola would owe the IRS $3.3 billion in underpaid taxes and penalties due to transfer pricing schemes that could ultimately cost investors up to $12 billion. As seen in 2021, AdaptHealth shares dropped by 15% after the co-CEO was accused of tax fraud, so it is clear that risks associated with tax are of material importance to investors when considering their financial decisions.

When investors can understand the economic scale of their operations in different jurisdictions, they can greatly improve their investment risk analysis processes. This is supported by The FACT coalition, who published a Report calling on the Securities and Exchange Commission to Increase Financial Reporting to Protect Investor Interests, highlighting that this information would improve securities analysis, providing a more complete picture of material risks relating to free cash flows, corporate governance and operational practices, and geopolitical risks, among other benefits. Tax is not being seen as a short-term cost factor, but rather as both an instrument for sustainable development, and also as an element of the risk management frameworks of investors.

In consideration of the above, tax is very much in the spotlight, and is increasingly being considered by the stakeholders of companies as a material topic that must be comprehensively and transparently reported on.

Competition and confidentiality

One common argument against tax transparency is that this would undermine confidentiality and reduce the competitiveness of companies. However, we at GRI believe that in transparently communicating tax practices and tax payments increases the competitiveness of companies. As we have already demonstrated, tax information, such as public country by country reporting is of crucial importance to investors due to legal, reputational and financial risks, with it clearly being set out that confidentiality surrounding tax matters creates significant challenges to investors (Amazon). Furthermore, if shareholders are aware that they will need to go to significant steps to access this information, such as having to file shareholder resolutions, the attractiveness of the company as a potential investment reduces.

Instead, those companies who already transparently publish their information will enable the shareholders and investors to far better assess risks; invest knowing that the company wont be faced with a multibillion tax case, or a significant drop in shares as the result of being in a scandal, such as JSW Steel, who saw a 4% drop in shares after being accused of tax evasion. Investors are able to understand about the risk appetite of companies, about the quality of the profits, and how this is all managed.

Companies will be able to demonstrate their competitive advantage reporting with GRI 207 as this demonstrates that they are not short sighted about long term value destruction and are able to adapt to the operating environment. It also demonstrates a company invests in keeping high quality internal controls and systems in place to process information, and that they have a firm grip of an understanding of tax.

As the pressure on investors grows to demonstrate that they are conducting robust assessments of their portfolios, the attractiveness of companies who enable these assessments through transparency will increase. If companies do argue the notion of confidentiality, it should be considered in response that the majority of companies will be fairly paying taxes and won't have aggressive tax planning, and therefore

[1] https://www.reuters.com/article/us-france-tech-google-tax-idUSKCN1VX1SM

nothing to hide. There has also thus far not been negative reactions towards companies who have already begun voluntarily publishing.

Greenwashing

As the pressure grows for organizations to demonstrate their positive contributions to sustainable development, we are also witnessing a significant increase in litigations centered on greenwashing claims. Furthermore, there is also growing pressure for investors to demonstrate that they are investing into 'green' businesses, and to demonstrate that they are not greenwashing their investment practices. One example being the US$1.5 million fine imposed by the SEC on BNY Mellon for omitting or making misleading statements about the ESG investment considerations made in connection with its managed mutual funds.

The holistic nature of GRI 207 helps combat greenwashing, as it ensures that companies provide information and tangible evidence of their practices. Furthermore, as the standard is universal and applies to all industries the information reported under it can be very clearly and effectively compared by investors. Companies through GRI 207 provide evidence for the public tax statements they make, and through this way in particular public country by country reporting can help to prevent and identify potential greenwashing.

By using GRI 207, companies are able to show the full holistic scale of when and where they are positively contributing to sustainable development beyond carbon pledges. Not mandating tax transparency means it is unclear when tax strategies and behaviours do not align with the sustainable behaviour that is being claimed by the company. As already referenced, we see that climate emissions are far more reported on that tax, which is leading to often false misconceptions about the overall sustainability of companies, who will often selectively provide information.

It is not just about the information in the balance sheet or in the profit and loss, it is the full story that really demonstrates the commitment of a company. For example, a company may in fact pay a very low tax rate due to exceptions placed on 'green products' or 'green services', as we see in many policies. This is outside simple financial materiality; whereby financial materiality is simply deemed as monetizable risk of a certain magnitude.

Tax integrity and country by country reporting translates promises into action, creating more challenges for companies to attempt to greenwash. It will also provide stronger financial incentives for the investment community to avoid greenwashing companies and invest in companies that provide a full holistic set of information, including on tax. This will also set a precedent of public country by country and tax integrity reporting as being an example of good practice, amongst both companies and investors.

Conclusion

International tax co-operation will not be possible without effective exchange of information, and the pressure on companies, policy makers and investors to act on aggressive tax planning is here to stay. The shifting societal expectations around company's tax practices, as well as the significant ongoing regulatory changes, show that this issue represents a substantial business risk to Amazon and others.

Our recommendation would be to go beyond mandating disclosure under 207-4, and instead implementing GRI 207 in full, making any additional adjustments to comply with national and international specifications where necessary. The modular system of the GRI Standards would also enable companies to integrate this into their wider sustainability impact reporting. As already referenced on page 1, the GRI Standards are the most widely used sustainability reporting standards both globally and in Australia.

Furthermore, we would recommend the Treasury also considers including companies beyond just MNEs in the scope, as there can also be substantially important tax information coming from companies who are operating in only one or two jurisdictions. One example of how GRI 207 could be implemented for companies beyond MNEs could be by requiring the firms tendering for contracts from the Australian government to report with the Standard in full.

We would like to reiterate our support for this initiative and commend the Australian Treasury with being a front runner in mandated public country by country reporting, and we look forward to continuing our engagement on this initiative.

Sincerely,

Peter Paul van de Wijs

Chief External Affairs Officer

1st September 2022