CORPORATE TAX PRACTICES:

MOVING FROM COMPLIANCE TO RESPONSIBILITY

CAC 40 ENGAGEMENT REPORT

FORUM POUR L'INVESTISSEMENT RESPONSABLE

CONTENTS

FOREWORD

TAX RESPONSIBILITY OF CAC 40 COMPANIES:

a Dialogue and Engagement campaign led by the French Social Investment Forum (*Forum pour l'Investissement Responsable, FIR*)

"Companies benefit from the quality of education and research, and from the infrastructures, institutions and healthcare systems of the countries in which they operate. Their contribution to the public finances of these countries is therefore part of the social contract. It is a mutually beneficial social choice. This is why the FIR, through its engagement, aims to remind companies that fiscal citizenship is an integral part of corporate social responsibility and to encourage them to adopt best practices."

Alexis Masse, President of the FIR.

"In the current context, where the PACTE law (on business growth and transformation) is urging companies to define their "raison d'être", reflecting their positive contribution to society, they cannot neglect the importance of their contribution, as taxpayers, to the general interest and to social cohesion. We hope that the FIR's engagement campaign will help to raise awareness among CAC 40 companies and enable them to engage in an open dialogue with investors on the issue of their tax responsibility."

Caroline Le Meaux, President of the FIR's Dialogue and Engagement Commission.

PART 1

CORPORATE TAX RESPONSIBILITY: CONTEXT AND ISSUES

Tax responsibility, an integral part of Corporate Social Responsibility

At the end of 2018, the FIR's[1] Dialogue and Engagement Commission launched a engagement campaign on the tax practices of CAC 40 companies. The FIR's goal was to use its *Cordial* (*corporate dialogue*) platform to promote an exchange with French multinationals on the concept of tax responsibility.

For the responsible investor community, tax policy is a key dimension of Corporate Social Responsibility (CSR). The tax burden, which is intended to fuel public finances, is part of the cycle of distributing value to local communities and contributes to the development of the ecosystem through high-quality infrastructures and public policies. Companies' tax contributions to the state budget enable governments to make public investments that, in turn, benefit the companies located in the territory concerned.

Responsible finance actors therefore encourage companies to deal with the question of tax not merely from a regulatory and administrative compliance perspective, but as an integral part of their sustainable development policy.

By sending a strong signal to issuers to encourage them to reflect on their tax transparency and responsibility practices, the FIR wishes to encourage major French companies to move towards a proactive "fiscal citizenship" approach. This implies that companies located in France and abroad should undertake to pay their taxes in the jurisdiction where they actually create economic value. For responsible investors, the national and international tax behaviour of companies – as well as their willingness to disclose this information – represents a preliminary and indispensable analysis framework for making informed decisions.

For the moment, however, tax is a blind spot in environmental, social and governance (ESG) reporting, unlike other aspects of sustainable development for which precise and shared indicators have been developed. It is essential that a multi-stakeholder debate be organised to develop a typology of criteria for tax responsibility: such a tool would enable investors and companies to start a dialogue using a common framework.

[1] The network of investors sitting on the FIRS's Dialogue and Engagement Commission represents €4,460 billion of assets under management.

Corporate tax practices: what are the issues for responsible investors?

Tax opacity and avoidance are risky practices that reflect short-term financial considerations: they expose companies to significant reputational and operational risks. In the long term, these practices can lead, beyond risks to corporate performance, to a deterioration in the quality of the economic environments in which companies operate, due to insufficient funding for infrastructure, education, health or research systems. In a context where government revenues are generally falling and where public intervention is effectively reduced, the value created by companies has a direct impact on national economies, especially if these companies have a global presence. Finally, insofar as companies, particularly multinationals, are increasingly asserting their social commitment through adherence to the United Nations' Sustainable Development Goals (SDGs), for example, it is essential that they adopt tax behaviour aligned with achieving these goals.

In addition to these negative impacts for governments and companies, there are also disadvantages for investors: tax avoidance is financially damaging to their stakeholders (policyholders, clients, etc.), as well as to their investments, since the share of government assets in their investment portfolios remains significant. According to the OECD, government tax revenue shortfalls range from between $100 billion and $240 billion each year, or between 4% and 10% of global corporate income tax revenues. The French Council of Economic Analysis (*Conseil d'Analyse Économique*, CAE) indicates that in France, this tax leakage may amount to approximately €5 billion per year,[2] a direct result of large corporations shifting their profits to jurisdictions with preferential tax rates.

In recent years, international taxation has become a subject of controversy and now occupies a significant place in the public debate. The media has seized on cases such as Luxleaks,[3] the Panama Papers or the Paradise Papers, which relate both to tax avoidance and to tax evasion.

On another level, the practices of the GAFA four are in the spotlight: with business models that create intangible value with no physical presence, these digital giants escape tax in jurisdictions where they have considerable activity and large user volumes.[4] Within the EU, France has spearheaded the taxation of GAFA companies by unilaterally deciding, in July 2019, to levy a tax on their turnover – paving the way for European action in this area. For the European authorities, developing a tax framework adapted to the digital sector is now a priority, both financially (recouping and levelling government tax revenues) and politically (all economic players must pay their "fair share" of taxes).

Generally speaking, multinationals are faced with an increasing demand for transparency with regard to their tax ethics. This pressure comes from public opinion and civil society, but also from multilateral institutions, European authorities and French state legislature.

At the same time, the debate on responsible tax is being reinforced and clarified by formalising best practices and developing potential reporting criteria in relation to transparency and governance. In addition to the long-term work performed by the OECD in this area, examples include the proposals of the B Team, an international coalition of business leaders committed to responsible capitalism, or the GRI 207: TAX 2019 standard issued by the Global Reporting Initiative (GRI), a pioneering organisation in the field of ESG reporting.

For the FIR, the Dialogue and Engagement Commission's campaign is part of the same requirement for transparency and social responsibility: it aims to make issuers aware that responsible investors are increasingly focusing on tax issues and to encourage issuers to develop their practices to target higher standards.

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[2] "International Corporate Taxation: What Reforms? What Impact?" Les notes du *Conseil d'Analyse Économique* N°. 54, November 2019. This note aims to "predict the change in the relative attractiveness of countries and the variation of tax revenues induced by the implementation of a broad range of different reforms currently discussed at the OECD".

[3] At the end of the Luxembourg trial in the so-called "Luxleaks" case, the agreements between numerous companies and the Luxembourg tax authorities were qualified as information of public interest. Their disclosure corresponded to the right to freedom of expression and public warning according to Article 10 of the European Convention on Human Rights.

[4] See the note published by Deloitte and Taj (19/03/19): https://taj-strategie.fr/fiscalite-internationale-locde-entend-modifier-lequilibre-fiscal-entre-pays-source-pays-de-residence (in French).

An increasingly demanding regulatory and legislative framework for tax transparency

In less than a decade, companies' obligations in terms of financial and tax transparency have increased considerably, as a result of cumulative efforts:

- At the international level, where tax administrations have started to exchange information on the taxation of multinational enterprises;
- Within the European Union, by systematically bringing integrated reporting into the CSR framework and by requiring accounting transparency in the extractive industries (mining, oil, forestry) via country-by-country reporting;
- In France, by extending CSR to include the fight against tax fraud and tax evasion.

Key milestones in this evolution include the following:

- In 2013, the OECD launched the BEPS project,[5] an unprecedented international tax coordination effort to "close gaps in international tax rules that allow multinational enterprises to legally but artificially shift profits to low or no-tax jurisdictions". Adopted in 2017, the country-by-country reporting recommended by the BEPS provides tax authorities with "an overview of where profits, turnover, employees and assets are located, and where taxes are calculated and paid" (See: Appendices).
- In 2013, the European Union imposed greater accounting transparency on the extractive sector, requiring such companies to "disclose material payments made to governments in the countries in which they operate in a separate report, on an annual basis". Although it does not deal directly with taxation, Directive 2013/34/EU[6] aims to strengthen the fight against corruption, misuse of public funds and illicit financial flows. The Directive also reinforces the call for corporate citizenship, stating that the profits stemming from a company's activities in a country should benefit that country and its population as a whole.
- In France, increased transparency has been imposed on banks. After the 2008 crisis, the aim was to limit speculative activities, prevent banking crises and protect customers. The law on the separation and regulation of banking activities (French Official Gazette, 26/07/2013) requires all credit institutions – banks and insurance companies – to publish annual information on their activity by country: name of entities and nature of activity, turnover, number of employees, net profit, income tax, public subsidies received, etc.
- In addition, since 2017, the French legislator has been working to rationalise and systematise integrated reporting. This development stems both from the transposition into French law of the non-financial reporting Directive 2014/95/EU, and from the replacement of the CSR report by the Statement of Non-financial Performance (*Déclaration de Performance Extra-financière, DPEF*). Applicable since 1 September 2017, the DPEF includes the main CSR risks relating to the company's activities, initially grouped around four pillars: social-societal, environment, anti-corruption and human rights (See: Appendices).
- The French legislative framework has also been getting tougher in the fight against tax evasion and fraud with the adoption of the so-called Sapin II Law of 9 December 2016 on "transparency, the fight against corruption and the modernisation of the economy". The Act of 23 October 2018, which amends Article L225-102-1 of the French Commercial Code, goes further: by extending the DPEF to include a fifth pillar («combating tax evasion»), it integrates – albeit partially – tax practices into the scope of CSR (See: Appendices).

[5] BEPS: Base Erosion and Profit Shifting.
[6] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0034

PART 2

METHODOLOGY AND MAIN LESSONS FROM THE FIR CAMPAIGN

Methodology and implementation of the FIR's Dialogue and Engagement campaign: a preliminary consultation on the tax practices of CAC 40 groups

The Dialogue and Engagement campaign on the tax practices of CAC 40 companies began with a survey to identify the responsible tax policies already formalised by these major groups and to analyse their degree of maturity in relation to the expectations of the responsible investment community.

Letter addressed to the Chairmen of CAC 40 companies by the FIR

This first phase of the campaign, which began in December 2018 and continued in 2019, involved sending a letter by post to the Chairman of the Board or, failing that, to the CEO, of each CAC 40 company. The letter detailed the objectives of the FIR campaign and included a six-point tax questionnaire (See: box below). The letter stated that replies would be anonymised.

Analysing the responses firstly allowed us to assess the companies' level of awareness and current thinking regarding the tax aspects of their CSR policy. It also enabled us to identify tax governance and transparency practices that are both economically rational and socially responsible and which, in the FIR's opinion, deserve to be generalised.

This is not a rating exercise, but a positive step on the part of the FIR designed to mobilise companies in preparation for its dialogue campaign, which will continue in 2020.

FIR Questionnaire

1 | Do you have a tax responsibility charter? Does it, for example, refer to what you consider to be unacceptable practices? Is it publicly disclosed?

2 | Do you publish a report on the group's tax organisation and the taxes paid on a country-by-country basis? By geographical area? Are you considering other types of reporting?

3 | If not, are you working to implement a charter and a report? If yes, what are they?

4 | Do you adhere to tax responsibility standards (e.g. B Team Responsible Tax Principles). If not, why not?

5 | Where applicable, what governance practices and indicators have you put in place to deploy this policy?

6 | How do you intend to develop your policies on this topic?

Level of participation of CAC 40 companies in the FIR consultation

At the end of the first phase of the Dialogue and Engagement campaign, 25 responses had been received across all sectors, representing a survey participation rate of 60% (see table of companies that responded favourably to the FIR request).

The banking and insurance sector – represented by four companies in the CAC 40 – stands out with a 100% participation rate. We recall that this sector has been subject to stricter obligations in terms of tax transparency since the introduction of the 2013 law on the separation and regulation of banking activities.

List of CAC 40 companies that replied to the questionnaire

ACCOR	ENGIE	SAINT-GOBAIN
AIRBUS	HERMÈS	SANOFI
AIR LIQUIDE	KERING	SOCIÉTÉ GÉNÉRALE
ATOS	L'ORÉAL	SODEXO
AXA	MICHELIN	TOTAL
BNP PARIBAS	ORANGE	UNIBAIL-RODAMCO-WESTFIELD
BOUYGUES	PERNOD-RICARD	VEOLIA
CRÉDIT AGRICOLE	PSA	
DANONE	SAFRAN	

Significant mobilisation, but responses of varying quality

It is encouraging that 60% of CAC 40 companies have chosen to take part in the FIR campaign. This figure indicates that these companies are willing to engage in a dialogue on the tax issue, sometimes at the highest level, as evidenced by the number of letters signed by CEOs or Chairmen of Boards of Directors.

Despite this positive signal from the issuers concerned, it is nonetheless important to emphasize the uneven quality of the responses received, both in terms of their level of detail and their relevance.

In the interests of completeness, the FIR has supplemented the information provided by the companies with additional sources published by the parties: tax and/or ethical charter, registration document, integrated report and CSR report.

The FIR's findings and recommendations on tax responsibility

Unclear tax policies, where compliance prevails over responsibility

The FIR's consultation provides an overview of responsible tax behaviour as perceived and practised by CAC 40 groups in 2019. The 60% response rate reveals a certain willingness on the part of large French companies to address the issue of their tax behaviour. The survey nonetheless shows the limitations of this exercise: firstly, because information on tax policy is often scattered and difficult to exploit; and secondly, because such tax policies tend to be treated from a compliance angle rather than from a tax responsibility perspective.

NB*: A detailed analysis of the responses to the FIR questionnaire on CAC 40 tax practices can be found in Part III of this note.*

The responsible investor community represented by the FIR is increasingly focusing on the issue of tax transparency and responsibility: there is no doubt that this topic will be a priority for such investors in the coming years. Major groups must therefore be prepared to address this issue at the highest level and to formulate concrete commitments in this area, just as they have done on other aspects of CSR.

On the basis of the responses obtained as well as the questions that remained unanswered, the FIR recommends several changes in the tax policy of CAC 40 groups. These recommendations on tax responsibility and transparency are intended to help companies enrich the roadmap of their sustainable development policy.

The FIR's recommendations for fiscal citizenship

1 | The Board of Directors should be responsible for the company's tax governance.

2 | The company's tax strategy must be integrated into its CSR strategy, and forms part of this strategy.

3 | A responsible tax strategy goes beyond simply complying with laws and forbidding tax evasion practices. Tax responsibility reflects a company's commitment to pay taxes in the jurisdictions where it actually generates economic value. It is a contribution to public finances, necessary in particular for achieving Sustainable Development Goals (SDGs).

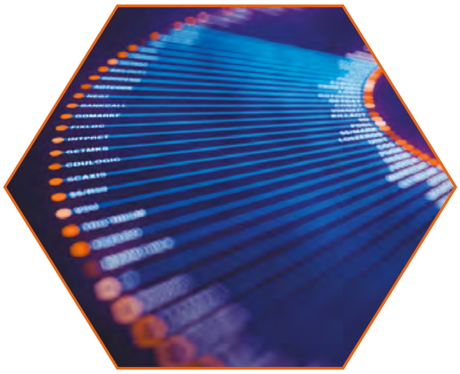
4 | The guiding principles of tax responsibility (defined in 3) should be expressly described in a publicly available format, separate from the registration document, and easily accessible on the company's website. Drawn up in the form of a "tax responsibility charter", this information should be reviewed and approved by the Board of Directors. This charter is also designed to appear in the integrated report (or CSR report) and in the registration document.

5 | The tax responsibility charter can draw on the principles and standards that apply in this area, i.e.:

- Commitment to the Sustainable Development Goals (SDGs);
- Adherence to OECD recommendations on combating tax base erosion;
- Indication of the tax practices forbidden from use within the company and disclosure of the jurisdictions considered as "tax havens", specifying the source of the list;
- If the company has a presence in tax havens, the economic justification for its activities in these jurisdictions;
- In the absence of such a justification, a commitment to withdraw from these tax havens;
- Publication of an annual tax responsibility report.

6 | An annual tax responsibility report should be published by the company, reflecting its application of the principles set out in its tax responsibility charter. This annual tax report may constitute a specific section of the statement of non-financial performance (DPEF).

7 | The annual tax report should detail the taxes paid in each jurisdiction as well as elements enabling the user to put this information into perspective (revenues, profit, headcount, etc.). The report should indicate the factors explaining the difference between the theoretical tax rate and the effective tax rate.
The report should also enable the user to measure the progress made and the obstacles encountered with regard to the objectives set by the charter, via a list of predefined KPIs. The tax information should be published in a form that is intelligible and accessible to non-tax professionals (shareholders, investors, clients/consumers).



PART 3

DETAILED ANALYSIS OF RESPONSES TO THE FIR QUESTIONNAIRE

Level of company participation

At the end of the first phase of the Dialogue and Engagement campaign, and after general and specific reminders, 25 responses had been received across all sectors, representing a survey participation rate of 60% (see table of companies that responded favourably to the FIR request).

The four companies from the CAC 40 banking and insurance sector – whose tax transparency obligations are stricter, in accordance with the 2013 law on the separation and regulation of banking activities – all responded favourably to the FIR request.

Hierarchical level and quality of responses

Responses were received from 60% of CAC 40 companies. These responses were sometimes sent from the highest level. The FIR received letters from a total of nine senior executives who took up their pens to accompany their company's answers to the questionnaire (representing more than a quarter of the responding companies). These executives comprised four Chairmen of the Board of Directors, two Chairmen of the Supervisory Board, two Chief Executive Officers and one Company Secretary.

Despite this positive signal from the issuers concerned, it is nonetheless important to emphasize the uneven quality of the responses received, both in terms of their level of detail and the relevance of the information provided.

- Of the 25 participating companies, less than half (10) responded to all six questions.
- Ten other companies only partially answered the questionnaire. The open-ended questions – questions 3 and 6 – were the most frequently omitted, indicating a difficulty in dealing with tax policy beyond regulatory compliance.
- Four of the participating companies (irrespective of the degree of progress of their tax policy) drafted a global response to the six questions, leaving it to the FIR to isolate the information requested.
- Finally, one company, whose CEO wrote a personal letter to the FIR, reproduced word-for-word the "tax policy" from its CSR report as an overall response to the questionnaire.

In light of the heterogeneous nature of the responses, and for the sake of methodological rigour, the FIR supplemented the companies' responses with additional sources of information published by the parties: tax and/or ethical charter, registration document, integrated report and CSR report.

Lessons from the survey

To understand the tax responsibility maturity of CAC 40 companies, the FIR's Dialogue and Engagement Commission used its questionnaire to ask them about the following points:

- Existence of a publicly available tax responsibility charter
- Reference to unacceptable tax practices in the charter (or in any other company information source)
- Publication of a tax report detailing the taxes paid on a country-by-country basis or by geographical area
- Existence of other types of reporting (actual or planned) on this topic
- Adherence to international tax responsibility standards
- Addressing tax policy through governance practices and implementing indicators to monitor this policy
- Planned development(s)

Existence of a publicly available tax responsibility charter

For the FIR, a "tax responsibility charter" is a written, publicly available statement of principles that formalises a company's commitment to pay tax where value has been created in order to contribute to a fair sharing of value. More generally, this charter sets out the company's course of action as a responsible taxpayer.

More than half of the companies participating in the FIR survey (15 out of 25) answered positively to this question. Nevertheless, of these 15 groups, two were found to have charters that, after verification by the FIR, did not meet the required criteria; while a third company was found to have no such document. These three companies were therefore eliminated from the count. In total, 12 companies out of the 25 that took part in the survey actually have a document describing their tax policy. For one of these 12 companies, this document takes the form of a publicly available tax code of conduct, which reflects an effort to ensure consistency between the principles disclosed internally and externally.

It is important to note that this document is generally referred to as "tax policy" (ten occurrences), with only two companies labelling it "tax transparency". The notion of "tax responsibility" does not appear in any of the document titles.

Note that the content of this document varies considerably from one company to another. In some cases, it is a one-page statement of principles; in others, it is a detailed and argued document (sometimes enriched with tax data) of up to seven pages.

In the best cases, this charter formalises the company's position, going beyond simple tax compliance. The document explicitly mentions the payment of taxes as a social contribution to the state and describes the positive role of the company in redistributing value to public budgets. One of the companies responding to the FIR chose to emphasise the notion of "corporate citizenship", a term that we use in the present note.

Developing a document explaining the principles of the company's tax policy reflects a proactive approach that goes beyond regulatory requirements. This approach was initiated in early 2010 by a handful of pioneering companies in the banking and energy sectors.

Of the 13 groups out of 25 that have not published a tax charter, three have made it a short-term priority and are working to produce a document by the end of 2019.

Of these 13 groups, nine companies nevertheless have documentation describing, in varying degrees of detail, the guiding principles of their tax policy. This aspect is generally included in the registration document or, less often, in the CSR report or integrated report.

To summarise, 21 out of 25 CAC 40 groups publish the guiding principles of their tax policy in either their tax charter or registration document, periodically addressing the concept of responsible tax.

The four remaining companies confine tax to the financial and accounting field alone – through the "corporate income tax" line item in their registration document – without any consideration of sustainable development or CSR. For these companies, an effort of reflection and communication is required.

Existence of a tax code of conduct for internal use

Although they were not asked the question, 11 of the 25 companies that replied to the FIR spontaneously mentioned an internal tax code of conduct or an ethical code including a tax component, regardless of whether or not they have a tax charter.

Detailed indication of unacceptable tax practices

With the exception of two companies that did not answer this question, almost all CAC 40 respondents (23 out of 25) stated that they disclose the tax practices they consider unacceptable in documentation intended for the public.

Our analysis of the documentation confirms the existence of this information for these 23 groups, with the exception of three companies where we found a discrepancy between their response and the information actually available. Unless the FIR is mistaken, no mention of such practices can be found in their publicly available documentation.

A total of 20 of the 25 companies that contributed to the FIR survey therefore publicly formulated tax boundaries that should not be crossed.

Among the 20 companies concerned, however, there are great disparities in the degree of detail of these practices: exhaustive and explicit lists are found alongside minimal declarations, which reiterate the company's commitment to comply with the law.

The most relevant practices cited by respondent companies are:

- Avoid the use of aggressive tax policies, i.e. setting up structures or operations with no economic or commercial substance, whose purpose is purely tax-related.
- Do not establish or conduct operations in tax havens, based on a list of the states and territories concerned. Where appropriate, progressively withdraw from these jurisdictions, or provide commercial or operational justification for establishing or conducting operations in these territories.

In most cases, positive practices complete the list:

- Respect the taxation of the company's profits in the tax jurisdiction where the economic value – goods or services – is created.
- Follow the OECD guidelines on intra-group transfer pricing, in line with the arm's length principle: "Business between Group companies must be transacted at market prices where a market price exists, or in the absence of market prices, must be supported by formally documented justification for the charge made."

Economic value here is defined by the level of profits, independently of other elements such as the level of turnover achieved, for example. A reflection on the notion of value creation would be desirable in the context of this approach.

Quality and level of detail when indicating unacceptable practices in company documentation

- No response to the question: 2
- Information not found: 3
- Succinct / not very explicit / strict compliance: 5
- Explicit but few details: 7
- Explicit and detailed: 8

Two companies from the banking sector stand out as being the most exhaustive in their description of the practices they consider unacceptable – both for their own tax practices and for those relating to their relationship with their customers. For these two institutions, the list of practices to be banned is systematically supplemented by the European Union list of Non-Cooperative Countries and Territories (NCCT). These companies indicate that their withdrawal from NCCTs is in progress and, where necessary, justify any activity remaining in any of these areas.

Note that the EU list is the shortest in terms of its identification of low tax jurisdictions: it includes eight countries or territories worldwide, none of which are in the EU. Other benchmarks, including those of the IMF and the Tax Justice Network NGO, take into account a wider list of criteria and review all tax jurisdictions. For the IMF, the typology is based on the rate of tax evasion by country (off-shore accounts of companies and individuals).[7] For the Tax Justice Network, the ranking takes into account the tax rates and/or tax incentives of each country.[8]

Existence of an annual group tax report detailing the taxes paid on a country-by-country basis or by geographical area

Since 2017, companies with a turnover above €750 million and with a subsidiary in the EU are required to transmit a declaration of taxes paid on a country-by-country basis to the competent tax authorities. This practice is required by the OECD BEPS Action 13. In France, country-by-country reporting is codified by *Article 223 quinquies C) Annex II* of the General Tax Code (declaration 2258-SD). However, French law does not require this declaration to be made public, as its mandatory disclosure was rejected by the French Constitutional Council.

In accordance with the French General Tax Code, all of the 25 companies in the CAC 40 sample have implemented this country-by-country report, which is submitted to local tax authorities and the French authorities.

Few groups choose to publish this report. Only three companies, all from the banking sector, comply with this level of transparency for the tax data relating to their establishments and operations abroad. The banks participating in the FIR study have been required to comply with this obligation since 2013. They disclose the following information: headcount, net banking income (equivalent to turnover), earnings before income taxes, income taxes, deferred income taxes, other taxes, and subsidies.

A notable exception is a group from an industry with high barriers to entry that "already publishes information on taxes paid in the consolidated cash flow statement".

In 2017, the company decided to "enhance this transparency by giving details of taxes published on a country-by-country basis, with the exception of VAT and taxes levied by the company on behalf of third parties".

In total, only 4 out of 25 companies make their country-by-country reporting publicly available. Only one of these companies is not subject to a regulatory obligation in this area.

On the whole, the responses regarding the public nature of country-by-country reporting overlap: companies justify the confidentiality of these reports because of the "operational data" they contain. According to them, these disclosures are "a practice likely to undermine competitiveness" by revealing country-specific financial performance information (e.g., production costs) that is generally not disclosed to the public.

On the other hand, tax reporting by geographical area – which is less sensitive – is more frequent, and is cited by 10 out of 23 companies.

Two companies in the sample have a hybrid position regarding geographical reporting: one publishes this information either in aggregate form or by specific weightings; the other discloses detailed information for the seven main countries in which it operates, and publishes information for the other countries in aggregate form.

[7] https://www.imf.org/external/pubs/ft/fandd/2019/09/pdf/fd0919.pdf
[8] https://www.financialsecrecyindex.com/en/

Data by country or geographical area is usually included in the registration document. Four companies have chosen to include this information in their tax charter: one company adopts a country-by-country format; one company reports by key countries; and two companies report by geographical area.

It is important to note that 11 of the 25 companies include no tax reporting, either country-by-country or by geographical area, in their public documentation. For these companies, this aspect of tax transparency remains problematic.

Existence of other types of tax reporting?

As a general rule, the open-ended questions were overlooked by the companies participating in the survey. This was the case for the question concerning "other types of tax reporting", which received no positive or relevant answers.

The 25 companies concerned (i) replied "no" or "N/A"; (ii) did not reply or (iii) gave an irrelevant answer, citing for example the tax reporting required by the DPEF. However, insofar as this declaration is a regulatory obligation, limited to the fight against tax evasion, it cannot be taken into account as a proactive move towards responsible tax reporting.

Adherence to tax responsibility standards, for example the B Team Responsible Tax Principles

On the possible adherence of CAC 40 groups to tax responsibility standards, the questionnaire mentioned, by way of example, the tax principles developed by the B Team, a coalition of business leaders committed to responsible capitalism, led by Richard Branson. The B Team coalition has made itself known through the rigorous tax responsibility and transparency standards it recommends to companies – the B Team Responsible Tax Principles (See: Appendices).

With the exception of one company that states that it "is not aware of these principles", almost all of the 25 responding companies state that they are in line with the spirit of the B Team tax principles, or even already implement them. In this respect, it is surprising that none of them formally adhere to the coalition.

The FIR directly contacted the B Team, which confirmed that no French groups had signed up to this declaration of principles.

Other standards or affiliations were nevertheless cited by four companies, although they are not relevant to the issue of tax. They are as follows:

The Dow Jones Sustainability Index, cited by two companies.

The B Corp Certification, cited by one company.

The AFEP (French Association of Private Enterprises), cited by one company.

The "*Partenariat Fiscal*" tax partnership initiative, cited by two companies, establishes "a new relationship of trust between companies and the tax authorities". It focuses on compliance and tax support for companies, who are granted the "right to make mistakes" in the same way as other taxpayers. This positive development, involving closer cooperation between stakeholders, is for the time being limited to ensuring legal certainty for companies, without including a "tax responsibility" dimension.

In addition, one company states that in 2018 it participated in the European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3). Although this information deserves to be mentioned, it cannot be considered as a tax standard.

Governance and indicators implemented to deploy the company's tax policy

The questionnaire sent to the Chairman was processed at different hierarchical levels and/or by different departments, indicating the wide range of stakeholders concerned by the tax issue: CEO, Chairman of the Board of

Directors, Chairman of the Supervisory Board, Vice-President for Public Affairs, Managing Director, Chief Financial Officer, Tax Director, Investor Relations Department and Head of CSR/Non-Financial Reporting.

Despite the wide range of professionals participating in the survey, it appears that tax policy remains the prerogative of the Finance Department.

For the overwhelming majority of the companies surveyed (24 out of 25), tax policy is governed by standard governance practices, in which the Tax Department reports to the Finance Department. Tax policy is discussed by the Board of Directors via the Audit Committee and is limited to its financial and technical aspects (tax expense, regulatory developments, provisions, litigation). For the CAC 40 sample in question, no responsibility is attributed to the Board of Directors as a whole with regard to tax, and there is no connection between the Tax Department and the CSR or Sustainable Development Departments.

Of the 25 responding companies, only one indicated that its Tax Department was independent of the Finance Department. In this case, the Tax Department is placed under the authority of the Company Secretary, who is a member of the Executive Committee.

Planned tax responsibility developments

None of the companies participating in the FIR campaign really grasped the scope of this question or answered it adequately. There is a mismatch between the expectations of responsible investors and the position of issuers, who seem to prefer the status quo. The survey reveals that:

- 7 of the 25 companies that replied are satisfied with their tax performance.
- 5 mentioned a possible update of their tax policy in the light of regulatory developments.
- 12 did not answer, answered "N/A", or provided an answer that was not relevant.

Only one company indicated a "planned development relating to the communication of tax policy to investors and the public".

APPENDICES

ADDITIONAL RESOURCES

The OECD BEPS project (Base Erosion and Profit Shifting)

Based on the observation that this phenomenon is detrimental to countries' fiscal integrity, the BEPS project aims to put in place a set of measures that will (i) "improve the coherence of tax rules across borders" (whether in relation to double taxation in the absence of bilateral treaties or loss of tax revenue through the transfer of profits to low-tax jurisdictions); (ii) "tighten substance requirements"; and (iii) "ensure increased transparency and certainty".

In 2015, the BEPS project produced 15 action plans to address the most severe dysfunctions in the international tax system. One of these plans requires multinational companies to provide the tax authorities with details of the countries in which they operate and to declare the taxes paid in each country. This is Action 13, which deals with the documentation of intra-company transfer pricing and introduces country-by-country (CbC) reporting, effective since 2017.

NB: *The OECD is currently preparing a comprehensive reform of the international tax system, which will include, amongst other things, new tax rules adapted to the GAFA business model. This reform will be presented in 2020.*

BEPS Action 13: country-by-country reporting

1 In its declaration, the group shall disclose, for each country or territory in which it is established, the identity of all entities established in that country or territory, including branches attached to a legal entity situated in another country or territory.

2 The declaration for each country or territory in which the group is established shall include the following aggregated data for the financial year in question:

- revenues from intra-group transactions
- revenues from transactions with independent parties
- total revenue
- profit or loss before income tax
- net income tax
- accrued income tax
- share capital
- retained earnings at the end of the year
- the number of full-time equivalent employees
- tangible assets other than cash and cash equivalents

Advantages and limitations of country-by-country reporting

Ever since the BEPS began its work, the publication of country-by-country reporting (via the company's website and/or its registration document) has given rise to a rift between the supporters and opponents of such an approach, crystallising a disagreement on the issue of tax transparency.

Among the arguments in favour of public country-by-country reporting, the most frequent justification is that such disclosure significantly improves understanding of the company's business model and facilitates reconciliation of the theoretical tax rate and the tax rate actually paid by the group, thanks to the details disclosed on the activities, profits and taxes paid in each of the countries in which it operates. This reporting allows users to identify the entities within multinational enterprises that receive significant income from other group entities (a process known as "intra-group transactions") for no specific, justifiable economic reason – other than the receiving entities being located in fiscally attractive jurisdictions.[9]

Among the arguments against, in 2016, the French Constitutional Council opposed the publication of country-by-country reporting (Article 137 of the Sapin II Law) on the grounds that it would disproportionately infringe on the freedom of enterprise and would thus be contrary to the Constitution. Several French and European companies argued that the disclosure of country-by-country reporting at French and Community levels would entail a risk to competitiveness: they would be the only companies subject to this additional degree of disclosure concerning elements of their commercial and industrial strategy. The examples cited concerned transparency on the price offered to an individual customer (if that customer is the only customer in a specific country), or a company being required to provide free access to the price differentiation of a product in different countries, despite such pricing policies generally being a central element of a company's commercial strategy.

As is often the case in tax matters, the degree of harmonisation must be as broad as possible so as not to disadvantage those who comply with the process. Country-by-country reporting remains a key tool for assessing the level of intra-group flows within a multinational enterprise and for better understanding the group's structure, particularly in sectors where intangible value is significant. Responsible investors are nonetheless aware that this type of mechanism is not sufficient to identify companies' good and bad practices, and that it does not provide an exhaustive analysis of their level of tax responsibility.

Initial DPEF framework

The Statement of Non-financial Performance (*Déclaration de performance extra-financière, DPEF*) replaces the CSR information in the management report for financial years beginning on or after 1 September 2017. The companies required to comply with this obligation are:

- companies listed on a regulated market with a turnover above €40 million or a balance sheet exceeding €20 million, and whose average number of permanent employees during the financial year is greater than 500;
- unlisted companies with a balance sheet or turnover (excluding VAT) over €100 million and more than 500 employees.

The DPEF must include the following information:

- Presentation of the "business model" or, where applicable, of all the companies for which the parent company prepares consolidated financial statements ;
- Analysis of the main CSR risks;
- Policies applied and due diligence procedures; and
- Results of the policies and performance indicators.

Where the company does not have a policy with respect to one or more of these risks, the statement shall include a clear and reasoned explanation of the reasons for this approach.

[9] On this subject, please refer to the following note (in French): "*Les avantages d'un reporting public pays par pays*", Trade Union Advisory Committee to the OECD, June 2016. https://tuac.org/wp-content/uploads/2018/06/1606t_beps_cbc_exec-FR-rev.pdf

Extension of the DPEF to tax fraud: a problematic interpretation

French Law of 23 October 2018, Article 20 (extract)

III. To the extent necessary to understand the company, the development of its business, its economic and financial results and the impact of its activities, the statement referred to in I and II shall present information on the way in which the company takes into account the social and environmental consequences of its activity, as well as, for the companies referred to in 1° of I, the effects of this activity with regard to ... the fight against corruption and tax evasion.

The inclusion of a tax component in the DPEF enshrines the payment of taxes as a social responsibility that commits the company to both the public authorities and other taxpayers. The "negative" formulation of fiscal integrity could be regarded as somewhat surprising, with it being defined as "the effects of [the] activity [of the firm] in the fight against [...] tax evasion", rather than as an instrument designed to redistribute economic value. However, the DPEF could provide an opportunity for companies to reflect in detail on the notion of responsible tax, which is not limited to measures taken to combat tax evasion.

Some experts criticize the imprecise nature of this formulation and the absence of any indication of how to evaluate or report on the fight against tax evasion. In its current form, Article 20 of the Law of 23 October 2018 is open to interpretation, leaving issuers and investors confused.

The B Team Responsible Tax Principles (2017)

Companies that are signatories to the B Team Responsible Tax Principles commit to provide information about their tax practices and governance to their stakeholders. These include investors, politicians, employees, civil society and the general public. This information is based on seven principles and relates to:

1. Accountability and governance
2. Compliance
3. Business structure
4. Relationships with tax authorities
5. Seeking and accepting tax incentives
6. Supporting tax dialogue and the development of effective tax systems
7. Transparency

With regard to point 7, signatory companies undertake to publish:

- Their tax strategy or policy, including their tax risk management strategy, their approach to dealing with tax authorities and their governance arrangements;
- A regular update on their progress and key issues;
- An overview of their group structure and a list of all entities;
- An explanation of why they have subsidiaries operating in low-tax jurisdictions;
- Annual information on the overall effective tax rate and on the taxes paid at a country level;
- Information on financially-material tax incentives; and
- The group's tax engagements.

Global Reporting Initiative: Tax 2019

In December 2019, the Global Reporting Initiative (GRI) – a pioneer in sustainability reporting – published an initial typology of responsible tax criteria, under the supervision of the Global Sustainability Standards Board (GSSB). The GRI 207 model states that tax contributions are "central to the fiscal policy and macroeconomic stability of countries" and that they "play a vital role in achieving" the United Nations' Sustainable Development Goals (SDGs).

The result of the work of 250 experts, the GRI 207 model[10] has two objectives: (i) to enable multinational enterprises to better understand the impact of their tax practices on government revenues; and (ii) to identify the tax information they should include in their reporting.

The key points of GRI 207 are to encourage companies to:

- report their tax practices in their integrated reporting (sustainable reporting);
- publish information on their tax strategy and governance, and on their tax risk management;
- publish country-by-country reporting including the nature of each entity's activities, headcount, revenues, profits and taxes paid; and
- explain the differences between the theoretical amount of taxes and the taxes actually paid (allowances, tax benefits, preferential regimes, etc.).

From a GRI perspective, the practice of public tax reporting has at least four advantages for multinationals. This reporting allows them to:

- quantify their contribution to local public finances and publicise these data;
- consolidate their credibility by demonstrating that they are "playing the game" with respect to their tax responsibilities;
- provide their stakeholders with the tax information they need to make informed decisions; and
- participate in the public debate on standards for a socially just tax policy.

[10] https://www.globalreporting.org/standards/gri-standards-download-center/gri-207-tax-2019/

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