Fair Tax

Fair Tax Mark
Criteria Notes
UK-based
Multinational Companies
2014-15

Second Draft

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Fair Tax

I. Foreword

Tax is an issue whose time has come.

In November 2013 the Institute of Business Ethics reported that:

> *Worries about tax avoidance have shot to the top of public concerns about business behaviour, replacing executive remuneration by a wide margin, according to the latest survey of public opinion conducted for the Institute of Business Ethics by IPSOS Mori.*[i]

The Fair Tax Mark, which has grown out of the campaign for greater corporate tax fairness that has been supported by a wide range of NGOs, civil society organisations, trade unions and churches, reflects that concern. However, more than just outline a code of corporate ethics when it comes to tax, what we encourage and reward is the use of these principles when they are put into practice.

That's our reason for being and what is unique about what we do. In that sense we are ahead of the curve on this issue because nothing like the Fair Tax Mark has existed until now.

The principles behind Fair Tax

Fair Tax's guiding principles when it comes to corporation tax are that:

1. A company should pay the right amount of tax (but no more) in the right place at the right time according to the spirit of the law of the jurisdiction in question.
2. A company should be able to be held to account on its tax behaviour by the public based on the information it chooses to publish.

It should be noted that we are not alone in thinking that these issues are important. The principles we are promoting directly relate to two of the seven tax principles that the CBI promotes, which say:

> *UK businesses should only engage in reasonable tax planning that is aligned with commercial and economic activity and does not lead to an abusive result.*
>
> *Firms should seek to increase public understanding in the tax system in order to build public trust in that system, and, to that end:*
>
> - *They should consider how best to explain more fully to the public their economic contribution and taxes paid in the UK.*
> - *This could include an explanation of their policy for tax management, and the governance process that applies to tax*

decisions, together with some details of the amount and type of taxes paid.[ii]

The difference between the Fair Tax Mark and others in this area is that we want to see these principles evidenced in action. The time for warm words is over.

Tax and the bottom line

It has long been argued that a corporately responsible company has to consider its triple bottom line, including its social and environmental as well as its conventional economic impacts. In 2006 Richard Murphy, one of the directors of the Fair Tax Mark, co-authored a report on tax and corporate responsibility[iii] for Sustainability, who have done much to promote the idea of the triple-bottom line. That report came to four conclusions:

1. There is increasing attention and importance being given to the wider economic impacts that companies have on their stakeholders.
2. The interests and involvement of stakeholders in the debate about corporate tax policies and planning is transforming the agenda from one driven primarily by the observance of legal and financial standards, to one focused on economic accountability to stakeholder groups.
3. A significant barrier to the integration of CR principles into tax policies and planning is the cultural framing of tax as a specialist, technical and non-core business activity.
4. Increased transparency of corporate approaches to tax is primarily an opportunity to build more robust tax strategies and to generate greater confidence among stakeholders.

At the present time we have no reason to argue with those conclusions. They remain as relevant now as they were in 2006 but now their time has come. The Fair Tax Mark is seeking to:

- Evidence robust tax strategies that in turn reflect sound corporate governance principles, fair play, integrity and an approach to business that all stakeholders can trust;
- Give indication of that approach in a readily accessible and non-technical manner;
- Encourage trade with companies that adopt such strategies.

By doing so we are unambiguously seeking to boost the fortunes of those companies that pay fair tax and are transparent and fully accountable about it. For us, this is evidence that they are good corporate citizens who are willing to pay their way in the world for the benefit of the common good, of which they form a valuable part. We are unashamed about that: doing the right thing should pay a return to those who do it. That is what the Fair Tax Mark seeks to encourage.

The development process

The Fair Tax Mark criteria are the result of more than a year of research and development. This has involved a broad range of stakeholders including civil society NGOs, business representatives and industry practitioners. Input has also come from our group of independent technical advisors drawn from academia and the professions.

As part of this process, feedback on at least two drafts of this document was invited via open consultation and the responses incorporated into the final version. The first round of consultations took place between June and September 2014 and all subsequent editions will undergo a similar procedure.

Developing the criteria is an ongoing process of negotiation that responds to changes in the regulatory environment and is open to as many voices as possible. This document will be updated and amended annually to include any significant technical developments and learning.

If you have any comments about these notes or about the Fair Tax Mark in general, please email us: info@fairtaxmark.net. You can also leave a message for the team via our website: www.fairtaxmark.net or write to us: Fair Tax Mark c/o ECRA, Unit 21, 41 Old Birley Street, Manchester, M15 5RF.

II. Introduction to the Multinational Criteria

These guidance notes explain all the criteria for assessing the corporation tax arrangements of UK based multinational groups deemed relevant for the Fair Tax Mark, as well the information that is required to address each one.

Companies are awarded varying points for meeting each criterion to contribute towards a potential total score of 45 points.

The term 'company' here refers to the group as whole.

The overall assessment is split into four parts:

- Transparency
- Country-by-country reporting
- Tax policy, implementation and compliance
- Tax rate and disclosure

The difference with the UK and Multinational criteria: addressing profit shifting

The Fair Tax Mark for multinationals is designed to be consistent with the version that applies to companies that only trade in the UK, especially in the areas of transparency, tax rate and disclosure. However, the added complexity of multinational companies bring other factors into play.

The complexity is created by the international nature of such organisations, and by their ability to choose how to structure their supply chains across a number of different countries and tax jurisdictions.

In contrast to the situation for solely-UK based companies, cross border trade and activity offers the potential for multinational companies to avoid tax by deciding to shift profits between higher and lower tax locations, including into tax havens and via companies that are not engaged in economic activity of any substance. This can result in substantial losses of revenue to the higher tax countries and is a serious systemic issue currently being worked on by the OECD in what they call their Base Erosion and Profit Shifting project.

The multinational criteria address this issue in two ways; the first is to put a large emphasis on rewarding multinational companies that are moving towards providing full country-by-country reporting. Only when companies report fully in public the profits they make and the taxes that they pay in every single country where they make them can any evidence of profit shifting come to light and companies be held accountable by the citizens of the countries where their actions have an impact.

Secondly, we reward multinational companies for stating and proving that they do not use tax havens for tax avoidance purposes.

A UK perspective on a global issue

A common question that arises when looking at the tax affairs of a multinational group is whether we are assessing the tax it pays in the UK or overseas. The answer is that we are addressing both, but from a UK perspective.

The UK perspective is necessary for two reasons. First is that this set of criteria is specifically designed for UK based multinational corporations and so embraces UK company law. The criteria could be, and we expect will be, adapted in due course for multinational corporations based elsewhere but the focus of these criteria is firmly UK based.

Secondly, the Fair Tax Mark has a stakeholder focus and in this case the stakeholders of concern are likely to be UK based.

When assessing the effective tax rate of companies, we focus on one overall figure, the global rate they pay, meaning the amount of tax they pay across all the countries where they operate. To get additional clarification on this figure, and its fairness, we ask for country-by-country data. However first we measure the global rate against the expected rate in the UK.

We have good reasons for doing this. Firstly we do this because this is exactly what the company will do in its own accounts. If a reconciliation of their effective rate to the UK headline rate is good enough for them then we have to say it is good enough for us, to a certain degree.

Second, we do it because ultimately a company has to be somewhere – and UK multinationals are ultimately UK based. We know that the UK tax system is now territorial and not world wide but actually think this simply gives us more reason to compare the world wide taxes due by UK multinationals with the UK headline rate of tax because a territorial system potentially provides even more incentive to shift taxes than does a world wide system.

What we are looking for is a clear sign of an overall commitment to corporate governance on tax, and just as statutorily required UK tax reporting in the financial statements of UK based multinational corporations requires comparison with the UK tax rate so too do we think a governance based approach does because it sets a bench mark for what might be expected and, importantly, from which variations should be explained.

We have stressed in the Fair Tax Mark that the focus is on explanation when it comes to tax rates. We think that is the case multinationally as well as nationally, but in that case a benchmark for comparison has to be set and we use the domestic tax rate of the parent company for that purpose.

This is another of the reasons why we put so much focus on country-by-country reporting. What people in any country, including the UK, want to know is what part of the activity of a multinational corporation takes place in their country, and in turn what part of the total tax paid is due to their own government. This has been a major issue in recent debates on international tax, and has been a focus of the OECD's work when looking at base erosion and profit shifting.

We believe that country-by-country reporting helps address this issue, and our ideal standard would allow stakeholders both in the UK and abroad to measure the fairness of a group's tax contributions.

Going above and beyond

We are well aware that what we are asking for from companies who might comply with the Fair Tax Mark exceeds the expectation of both UK company law and what many might voluntarily disclose present but there is very good reason for doing that. Many journalists, investors, and other users of accounts simply cannot work out what is going on with regard to the tax affairs of many multinational companies. That is because the information that is currently required by law, common practice and the focus of the International Financial Reporting Standards, does not answer the reasonable questions that people have with regard to this issue.

Ultimately we believe that this additional data must be in the audited financial statements but whilst this data becomes familiar believe that publication in additional statements may be acceptable.

That said, it is obviously important that we do not make any requests of a company that it is unreasonable for them to comply with. To make sure that this is the case we have noted with care the likely requirements for country-by-country reporting now being proposed by the OECD and as far as possible have tried to align our requests with those that companies will need to comply with for tax purposes in the near future.

Finally, although we have designed the criteria to be as fair as possible and applicable across industries and sectors, there may still be exceptional circumstances whereby what we consider to be abusive behaviour does not prevent a company from scoring enough points to gain a Fair Tax Mark. In this unlikely situation, we reserve the right to the final say and to exercise discretion.

Aims and Benefits of the Fair Tax Mark Criteria

> "better communication around tax can create significant value by building trust and enhancing reputations" (PWC 2012)

The Fair Tax Mark is about acknowledging, assuming responsibility for and being transparent about the impact of a company's taxation decision-making and policy.

The Fair Tax Mark is an indication that a company is accountable to stakeholders as well as shareholders when it comes to tax.

As such the Fair Tax Mark is recognition that tax is more than a quantitative issue about the amount of tax paid but is actually an issue of qualitative importance that is central to business culture and practice all the way through the supply chain.

The basic premise of the Fair Tax Mark is that a Fair Tax Company:

- Has adopted a fair tax policy that suggests that it is seeking to pay the right amount of tax (but no more) in the right place at the right time, where 'right' means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes;
- Is transparent about who owns it, what it does and where it is;
- Provides sufficient accounting data to suggest that its fair tax policy has been put into practice.

The value of the Fair Tax Mark criteria works in two ways: it protects the company from both reputational and financial risk at the same time as projecting an image of openness, honesty and trustworthiness to consumers and investors.

The purpose of the Fair Tax Mark

The purpose of the Fair Tax Mark Criteria 2014-15 is to provide organisations with a widely accepted and freely available set of criteria to guide them to achieving maximum transparency and fairness in their taxation policies, especially when it comes to the preparation of material for publication.

This UK Multinational version of the assessment tool has been designed for use by listed and private UK incorporated company groups with subsidiaries in other countries.

NB: Companies that have made losses over multiple years will be assessed on a case-by-case basis but the losses will generally be aggregated into the data and no special treatment needed.

III. The Assessment Criteria

This section explains the assessment criteria used in the Fair Tax Scorecard (section VI).

PART 1: TRANSPARENCY

1. Accounts

Purpose

This criterion ascertains whether or not a company places on public record the full set of accounts that it is required to give to its shareholders.[iv] Usually this would involve the accounts submitted to Companies House, but a set of financial statements permanently uploaded to its website is an acceptable alternative.

If the company does not publish its accounts in any of the above ways, the information required to award a Fair Tax Mark is not available and the assessment cannot continue.

Information required

Please attach a copy of the most recent financial statements or accounts of the company. It is recommended that the accounts be submitted in machine-readable form and under an open licence that gives explicit permission for reuse.

Fair Tax Mark question

Does the company publish a full (i.e. non-abbreviated) set of accounts even if not required to do so by law? (1 point)

2. Company activity

Purpose

This criterion assesses whether it is possible to find out what a company does. The amount of public information required by law on this issue is very limited. However, it is difficult to form any objective opinion on a company, its accounts and its tax payments without a good idea of what the company actually does. There needs to be sufficient information to understand the nature of the company's trade.

Information required

Evidence of what the company does. This might be obtained from:

- Website
- Advertising or brochures

Fair Tax Mark question

Is there clear evidence of what the company does either within its accounts or on an easily identifiable website that it runs? (1 point)

3. Company location

Purpose

This criterion assesses whether it is possible to clearly identify the company's place of trading. The only address that a company has to record on public record is that of its registered office but in many cases it does not trade from that address. Unless information on where it actually trades from is made available in its accounts it can be very difficult to find out where a company might be contacted, contravening the principles of transparency.

Information required

Evidence of the address at which the company trades if distinct from registered address. This might be obtained from:

- Website
- Advertising or brochures
- Directories

Fair Tax Mark question

Is there clear evidence of a trading address (as opposed to a registered office address), or a statement that they are the same in the accounts or an easily identifiable website that the company runs? (1 point)

4. Beneficial ownership

Purpose

This criterion assesses whether it is possible to ascertain who ultimately benefits from the trade a company undertakes. Beneficial ownership is a core transparency issue because public knowledge of the people behind a company reduces the risk of fraud and tax evasion. It is also vital to the establishment of a relationship of trust that is the pre-condition of a successful market economy.

Information required

Evidence of the names and addresses of the ultimate beneficial owners of the company. Each person owning more than 10% must be clearly identified and if the owner is a company or trust the ownership must be traced through that company or trust to the real people who benefit from those entities until the beneficial ownership of the company is made clear. The required evidence might be obtained from:

- Website
- Advertising or brochures
- Directories
- Annual return form of the company submitted to Companies House

Fair Tax Mark question

Is it clear who the ultimate beneficial owners of all shareholdings of more than 10% in the company are either from a statement in the accounts or at Companies House? (1 point)

Exception

Some companies such as cooperatives and community interest companies may operate under different ownership structures, where many members ultimately own them or their 'share' capital does not represent ownership. In these cases, if the business is transparent about its ownership structure then it may be judged as fulfilling this criterion.

5. Management

Purpose

This criterion assesses whether it is possible to ascertain who manages a company. This is another core transparency issue as directors are responsible for ensuring a company fulfills its legal obligations. Knowing they are people who can be both identified and trusted is vital so that the company can be held fully to account for its actions.

Information required

Evidence of the names and addresses of the real directors of the company is required. The names given must not just be those legally recorded as being directors but also those who are used to giving instruction to those directors if this is the case. The required evidence might be obtained from:

- Website
- Advertising or brochures
- Directories
- Annual return form of the company submitted to Companies House

Fair Tax Mark question

Are the names and addresses of all directors provided either in the accounts or at Companies House? Note: if the directors have been provided with an exemption from supplying this data and a properly notified service address is used a mark may still be given. (1 point)

PART 2: Country-by-country reporting

OECD recommendations to be published in September 2014 are likely to require multinational companies to produce country-by-country reporting data. We believe that this information should be available on public record and the information sought by this section reflects that fact.

We do, at least for the time being accept data that is consolidated either on a bottom-up basis, from the individual company up to the group as a whole, or from the group down to companies as long as in each case the figures reconcile to the main accounts. We are pragmatic on this issue as it appears that the OECD is going to be so for tax reporting purposes.

In this section, subsidiary refers to all the legal entities of the group including dormant companies. We do not recognise the concept of 'materiality' which allows some company groups to provide little detail on subsidiaries that contribute less than a certain self-defined amount to the overall group finances.

6. Subsidiary information: basic data

Purpose

A multinational corporation is, by definition, located in more than one country and is almost bound to be made up of a group or related companies. In the interests of transparency it is vital that we know, first of all where these companies are incorporated, secondly what they are called, thirdly where they actually trade, and lastly what they do. Unless we have this, very basic, data we do not know what companies are even reflected in the group accounts that are presented to shareholders. That makes no sense at all. Nor do we know where the geopolitical risks within the group are, what potential tax structuring might be in use, where supply chains might be located, and how the impact of shifting international environments might affect the company, including with regard to tax.

Information required

The information required is noted in the questions that follow and is designed to provide the information that answers the above questions.

Fair Tax Mark questions

a) Does the company disclose a full list of subsidiary companies stating their name and place of incorporation? (1 point)

b) Is the country of tax residence of each subsidiary disclosed, if different from place of incorporation? (1 point)

c) A further mark is given if a short description of the nature of the trade of the company is supplied. (1 point)

7. Subsidiary information: net asset/ equity value and income

Purpose

The answers to the questions in the previous section are useful, but give little indication of scale. Accounting data is all about assessing significance and it is for that reason that the next series of questions are asked because any user of a company's financial statements will want to appraise with sufficient reliability not just where a company is located, but to what extent it is committed to a jurisdiction as indicated by its investment in that location, where its profits arise, how much tax is paid in each place, where it is located, where its people are and what chance there is of recovering assets in the event of risk arising.

Information required

This question focuses upon the first two indications of scale, the first being the net investment by the group in each subsidiary, or alternatively, by consolidated total for a jurisdiction. The second indication relates to net income or loss arising in each subsidiary, or again, by consolidated total for the jurisdiction in which the subsidiaries are located

It should be noted that the questions raised in this section and those raised in the previous section are routinely answered in the published accounts of German public companies. There is, therefore, very strong European precedent for this information both being supplied, and being considered of use to the investors in such entities.

Fair Tax Mark questions

a) Does the company either disclose data on the net asset value or equity invested in each subsidiary or a consolidated total for this sum for each country in which it operates? (1 point)

b) Is data on either the net income or loss for the period provided for each of its subsidiaries or a consolidated total for this sum for each country in which it operates? (1 point)

8. Disaggregated tax data by subsidiary or by country

Purpose

The Fair Tax Mark believes that a company should publish sufficient information in its financial statements to demonstrate that it has fulfilled its commitment to pay the right amount of tax, in the right place, at the right time. The information on profits sought in the previous section clearly provides part of the information required to assess this; in this section information on the current tax charge included in the income statement of the accounts of each subsidiary company is sought, with the alternative offered that consolidated information for each jurisdiction in which the multinational corporation has an operation can be provided instead so long as exceptions are not made.

Current tax disclosure is required for a number of reasons. Firstly, this is likely to give rise to a payment to a government, and this is critical when appraising the future cash flows of a company. Secondly, from the stakeholder perspective it is tax paid that matters. Thirdly, deferred taxation is always a conditional liability, highly subjective, and uncertain as to timing, and for that reason of relatively little interest to most stakeholder users of accounts. Deferred taxation data is also, without indication of timing as to when liabilities might arise, of little use to investors either: they cannot appraise future cash flows based upon the very limited information that most deferred taxation provisions supply. As a consequence, the current tax charge is considered to be the best indicator of potential taxation liabilities both in the present, and future.

Information required

The current tax charge for each subsidiary company or, alternatively, consolidated data for each jurisdiction in which the multinational corporation has an operation, without exception.

Fair Tax Mark questions

Does the company either disclose the current tax charge made by each subsidiary for each trading period or a consolidated total for this sum for each country in which it operates? (1 point)

9. Disaggregated employment data by subsidiary or by country

Purpose

Like the information on asset investment and profit, data on the number of people employed and the amount that they are paid by subsidiary or jurisdiction is an indication of scale in both cases. The data does, however, provide a different indicator. Whereas investment and profits are both financial measures, the number of employees represents investment in human capital in a location. This is, very clearly, an indication of substance and a driver of economic activity out of which tax should arise. Furthermore, it also hints at another potential dimension of taxation on which data might otherwise be very hard to secure, which is the potential for the company to contribute to local taxation through payments made by its staff, or by the company on their behalf.

Information required

Information is sought on the average number of employees engaged by a subsidiary during the year. This should indicate the basis for the calculation, and the total gross remuneration that they enjoyed during that period, again with the basis of calculation being noted. This latter sum could be including, for example, benefits in kind and payroll taxes, or excluding such information, but in either case, this must be disclosed.

Fair Tax Mark questions

a) Does the company either disclose the average number of employees each subsidiary engages for each period together with a note on the basis of calculation used or a consolidated total for this sum for each country in which it operates? (1 point)

b) Is either the aggregate gross remuneration of the employees engaged during each period disclosed for each subsidiary together with a note of what the data disclosed includes or, alternatively, a consolidated total for this sum for each country in which it operates? (1 point)

10. UK Segment Data

Purpose

Multinational companies are required to provide segments data within their annual financial statements. They have a choice on the way in which such data can be presented. It may be provided based upon product or business division, or it can be provided geographically. We seek geographic data that does, at the very least, separate the UK as a head office location from all other parts of the company. When we refer to segment data of this type we expect the main categories of the income statement to be analysed on a country-by-country basis so that, for example, turnover is disclosed by segment, as are major elements of cost, profit before tax and taxation. The more information that is provided, the more points that will be awarded.

Information required

As noted above.

Fair Tax Mark question

Does the company provide consolidated data in its financial statements that at least differentiates UK trading and investment data as separate from data for all other territories? (2 points)

11. Consolidated and reconciled country-by-country data

Purpose

There is no requirement at present in International Financial Reporting Standards that segment data disclosed in a set of financial statements reconcile with the income statement in those same accounts. This significantly reduces the value of any such segment information because all accounting data is verified by completeness, and this may be absent without that reconciliation process being demonstrated.

Information required

We expect that the company's disclosure of the types noted above, either by subsidiary or by jurisdiction, to reconcile with the statements included in the financial statements on the same subjects for the multinational corporation as a whole or that a reconciliation statement be included explaining the adjustments required to achieve that objective.

Fair Tax Mark question

Does the company disclose trading data of the types noted in questions 7, 8 and 9 above on a consolidated basis by country with the totals reconciling to the group's consolidated accounts? (2 points)

PART 3: Tax policy, implementation and compliance

12. Public statement on tax policy

Purpose

This criterion assesses whether it is possible to find out what the company objectives are with regard to tax and rewards the statements for their content and aims. Every company has a tax policy, even if it has never explicitly recorded it, otherwise it could not manage its affairs properly. However, few companies state what their policy is and that means that in this vital area few companies can explain fully their motivations for certain decisions nor can they be held to account.

Fair Tax Mark question

Does the company have a tax compliance policy either on its web site or referred to in its accounts? (1 point)

13. Named director responsible for tax policy

Purpose

No policy can be properly managed without a person being given designated responsibility for its implementation. Such is the significance of tax for a multinational corporation that we believe that a main board director should have designated responsibility for this crucial aspect of its affairs.

Information required

The name of the main board director with responsibility for taxation within the company.

Fair Tax Mark question

Has the company appointed a named director to have responsibility for its tax policy? (1 point)

14. Report on compliance

Purpose

Good governance procedures require reporting. We believe that this is true with regard to compliance with the company stated taxation policy.

Information required

A report on compliance with the company's stated taxation policy referred to in the annual financial statements.

Fair Tax Mark question

Does the company report on its effective compliance with this policy and is this referred to in the annual financial statements? (1 point)

15. Tax policy statements

Purpose

It is, of course, possible for a company to state that its tax policy is to pay as little tax as it can by relocating transactions to those places where the prospect of their risk of disclosure, or of being taxed, is minimised, whatever the underlying economic substance of the transactions that they undertake in that place. Whilst this might reflect their policy, it would not be suitable for the grant of a Fair Tax Mark : (over which we always reserve the right to exercise discretion if there is evidence of a company's lack of suitability to receive such an award) and as such some indication as to the matters that we think should be referred to in a tax compliance policy is necessary.

Information required

A clear statement on tax policy within the accounts that includes explicit reference to:

- the intention not to abuse tax havens[v]
- the intention not to structure transactions artificially or abusively for the purpose of avoiding tax

Ideally this would state all the taxes it covers, be in the directors' report and cover some or all of the points noted below. However, having clear statements on the above on a website will be judged sufficient to fulfill the criterion in the first year in which a Fair Tax Mark is awarded.

Model tax policy notes would include a company's commitment:

- Not to maintain any type of connection to tax havens when this is not a legitimate trading activity with the purpose of serving the local community

- Not to use marketed tax avoidance schemes requiring disclosure under DOTAS regulations (Disclosure Of Tax Avoidance Schemes)
- Not use any arrangement that might fall foul of the General Anti-Abuse Rule
- Not to use Employee Benefit Trusts located in tax havens

Fair Tax Mark question

Does the tax policy statement refer to:

a) seeking to declare profits in the place where their economic substance arises? (1 point)

b) not using tax havens for tax avoidance purposes? (2 points)

c) not using marketed or abusive tax avoidance schemes likely to fall foul of the domestic tax avoidance legislation of any country in which the multinational company operates? (2 points)

16. Use of tax havens

Purpose

The use of tax havens has come to be seen as a proxy for multinational company tax avoidance and it is for that reason that we have interest in this subject.

For our purposes a tax haven is considered to be a jurisdiction scoring 65 points or more on the Tax Justice Network Financial Secrecy Index which is available at http://www.financialsecrecyindex.com/introduction/fsi-2013-results. We stress that using this cut off point is an exercise in judgement on our part. However all exercises in categorising tax havens have always, inevitably, reflected such judgement on both the criteria used for assessment and on where a cut off point might be. In this case we have made a distinction at a point where those included appear to commonly have this label attached to them and those excluded do not whilst recognising the data based backing to the analysis that the Tax Justice Network provides in its analysis.

We have no intention of penalising a company for locating a trade in a tax haven if its true economic substance is located in that place. For that reason disclosure of the use of each subsidiary in a tax haven is encouraged, because it may result in that location being considered immaterial or inconsequential for the purposes of this criterion.

What we are seeking to discover is whether or not presence in a tax haven reflects real economic substance. We think this substance might be indicated by the presence of a significant number of staff or net assets located in the jurisdiction. It may also be indicated by significant third party sales. The absence of these indicators is likely to indicate a token, or merely tax driven, presence in a jurisdiction. We would obviously encourage companies to supply supporting narrative data on these issues.

In our opinion the notional ownership of assets such as intellectual property with only limited resources available to manage them implies that the asset is not really managed from that place and therefore is not an indication of economic substance being present in a jurisdiction. That is why we look for data on a range of variables.

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Finally, as a tax haven subsidiary that is tax resident in the UK cannot be used for the purposes of corporation tax avoidance, we also take this into account. However, since it is likely that the motivation for the use of the tax haven in the latter situation will be either avoidance of another tax, or of regulation, we offer a reduced score in that case.

Information required

A full list of tax haven subsidiaries, their uses and tax residence as per the Country-by-Country reporting section.

Fair Tax Mark questions

Does the company use tax havens either as locations for subsidiaries or for transactions?

If the answer is no then award 4 marks and this section is complete.

If yes but it is clear that the use reflects the economic substance of transactions really located in the territory, award 4 marks and this section is complete.

If yes but it is disclosed that all such companies are UK tax resident, score 3 points.

If yes, but the previous questions do not apply, score zero points.

PART 4: Tax rate and disclosure

The Fair Tax Mark rewards companies for paying close to its expected rate of corporation tax and for making a fair contribution to society. It also recognises that there are legitimate reasons for this not happening on occasion and is careful not to penalise the fact that companies are also allowed various allowances and reliefs that may reduce their effective rates over a number of years.

To this end, the Fair Tax Mark puts a major emphasis on the way a company explains its tax rate, awarding points for well-communicated numerical and narrative explanations of the tax charge regardless of the actual rate.

17. Average tax rate

Purpose

This criterion assesses the current tax rate that a company is paying and how that compares over time to the expected headline rate. We use a period of four years because it is considered a long enough period to reveal trends but not too long to prevent changed behaviour being marked quite quickly.

Information required

The company's tax charges over the previous four years split into current and deferred tax charges.

Fair Tax Mark question

Note the company's average tax rate and award points as follows:

- 1.5 point if the company's current tax rate is between 5% and 7% below the expected rate;
- 3 points if the company's current tax rate is between 3% and 5% below the expected tax rate;
- 4.5 points if the company's current tax rate is between 1% and 3% below the current expected tax rate;
- 6 points if the company's current tax rate is within 1% of the current expected tax rate or above it.
- This question scores a maximum of six but up to four points are also awarded if the company explains its tax position well by scoring above six in questions 18, 19 and 20.

Exception

If there are years in which the company makes a loss this fact can be taken into account to ensure undue penalty does not arise when calculating tax rates.

18. Numerical tax reconciliation

Purpose

This criterion assesses whether it is possible to understand a company's tax liability using its numerical explanations included in the financial statements.

It is rare that a company pays an amount in corporation tax equivalent to the current headline tax rate multiplied by its declared profits before tax. There are many and varied reasons for the differences that arise, from tax allowances for capital investment and research and development due to the expenses that may be disallowed for tax purposes e.g. those relating to business entertaining expenditure, certain capital spending passed through the income statement and more.

If a company's tax liability is to be properly understood the difference between the tax that might be expected to be paid in a period and the tax actually due for that period must be explained in a clear and transparent manner.

Information required

A numerical tax reconciliation note should be included in the accounts, which explains in sufficient detail the difference between the current reported accounting profits and the current tax rate. The reconciliation should be specific in the matters it refers to and not rely on vague descriptions. To this end, at least 75% of the reconciling items should be precisely described e.g. using such phrases as 'The impact of capital allowance claims' or 'Reduced tax owing on capital gains arising'. Terms such as 'Other' or 'Losses' (without explanation being given) do not qualify in this respect.

In the context of a multinational company an explanation of the variance arising as a consequence of differing national tax rates is a key element in this reconciliation process and as a consequence an additional bonus mark is awarded if this is properly explained.

Exception

If the company has made a loss in previous years and only pays a low rate of tax in the current year as losses are carried forward an explanation of how the losses affect the current rate is required to fulfill the criterion.

Fair Tax Mark questions

a) Does the company provide a numerical tax reconciliation of its actual current tax charge to the current tax rate that might be expected for the year at the tax rate applying to the profits of the company? (2 points awarded to reflect the significance of the issue and to allow discretionary reduced grant if this is offered, but with very limited data to explain the variance.)

b) Does the company then reconcile its current tax charge with its total tax charge for the year by offering a reconciliation that explains the deferred tax provision for the year and other items that make up the difference? (2 points awarded for the same reasons as noted in (a))

Note: A bonus point may be added if at last 75% of the reconciling items in both parts of this process are precisely described e.g. using such phrases as 'The impact of capital allowance claims' or 'Reduced tax owing on capital gains arising'. Terms such as 'Other' or 'Losses' (without explanation being given) do not qualify in this respect.

An additional bonus point may be given for disclosure of how variance in different national tax rates has affected the overall rate but reference to the countries where the main variances have arisen is essential if this point is to be awarded.

19. Narrative reconciliation

Purpose

This criterion assesses whether it is possible to gain further insight into a company's tax liability with a narrative explanation as to why the company did not pay the required rate of tax in the year, if that was the case. It provides further explanation to the numerical reconciliation of the tax note referred to above.

Information required

A narrative explanation should be included in the accounts, which explains in sufficient detail the difference between the current reported accounting profits and the current tax rate. This should refer to all the major items in the numerical reconciliation noted above and explain why they have arisen and what their consequences might be. The reconciliation should be specific in the matters it refers to and not rely on vague descriptions.

Fair Tax Mark question

Does the company provide a narrative explanation as to why its current tax charge differs from the charge expected for the year at the tax rate applying to the profits of the company in its main place of residence? (2 points awarded for the reasons noted in 18 (a))

20. Deferred taxation

Purpose

This criterion assesses whether it is possible to gain insight into a company's deferred taxation charges and provisions. The current tax charge is the subject of questions 18 and 19. The tax charge in a set of accounts can, however, also include a deferred tax charge and a company may have deferred tax assets or liabilities on its balance sheet.

Like the current tax charge these need explanation if sufficient transparency is to be provided to ensure that the company's tax affairs can be properly understood.

Information required

A numerical analysis of the deferred tax charge for the period giving sufficient explanation of the reason for the deferred tax charge for the period; a narrative note providing further explanation of the deferred tax charge; a numerical analysis of the deferred tax asset or liability stating the reason why it has arisen; and a narrative note saying when the deferred tax asset or liability might have cash implication.

Fair Tax Mark question

Does the company provide a deferred tax note that:

a) Explains the balance of those assets or liabilities with significant precision so that the cause of at least 75% of the asset or liability is clearly described? (1 point)

b) States clearly when those assets or liabilities are likely in practice to have an impact on the company's tax bill or a statement that this is not known because it is more than five years after the balance sheet date? (1 point)

Exception

If a company does not have a deferred tax charge, asset or liability and it is clear that it has been making current corporation tax declarations at almost exactly the expected current tax rate then full marks may be awarded.

Bonus questions

Although the above questions are those on which the Fair Tax Mark is awarded we think it fair to give indication of those questions we might want to add to the marking process in future, of which there are two at present.

Both focus on disclosure of corporation tax either paid or due to be paid are as follows:

21. Does the company separately disclose its corporation tax and other tax liabilities owed or owing in its accounts, as required by company law?

22. Does the company separately disclose its corporation tax paid or received in the year in its accounts, whether required to by law or not?

The reason for seeking this information is that there is a growing tendency to suggest that corporation tax actually paid is the best indication of tax compliance since this is the sum actually reaching government that is used to benefit society.

We do not wholly share that view, but think that it is important that the tax charge in a company's accounts can be reconciled with the tax payments that it actually makes. This is not possible unless the information referred to in questions 12 and 13 is made publicly available. Therefore at this stage we are encouraging disclosure of this information but are not, as yet, awarding marks for its publication.

In the case of question 13, this should already be disclosed in all company accounts, but is not necessarily clearly indicated.

IV. The scoring system

The scoring system is designed to incrementally reward companies, not to punish them. It is based on the ideal standard of disclosure and behaviour we believe all companies should aspire to.

The scoring system we use will not, of course, ever be perfect – and companies can pass with a variety of different behaviours. However, no company group gets the Fair Tax Mark without having made at least some positive, progressive change – and this, we believes, justifies our system

UK-based Multinationals			*Solely UK-based Companies*		
Category	Points	Weighting	*Category*	*Points*	*Weighting*
1. Transparency 2. Country-by-Country data	17	38%	*1.Transparency*	*5*	*25%*
3. Tax policy, compliance and implementation	12	27%	*2. Tax policy*	*6*	*30%*
4. Tax rate and disclosure	16	36%	*3. Tax rate and disclosure*	*9*	*45%*
Proposed Threshold	**29**	**65%**	*Threshold*	*13*	*65%*

V. The Fair Tax Scorecard

SUMMARY SCORECARD		
CRITERIA	SCORE	NOTES
TRANSPARENCY		
1. Does the company publish a full (i.e. non-abbreviated) set of accounts even if not required to do so by law?	1	
2. Is there clear evidence of what the company does either within its accounts or on an easily identifiable website that it runs?	1	
3. Is there clear evidence of a trading address (as opposed to a registered office address), or a statement that they are the same in the accounts or an easily identifiable website that the company runs?	1	
4. Is it clear who the ultimate beneficial owners of all shareholdings of more than 10% in the company are either from a statement in the accounts or at Companies House?	1	
5. Are the names and addresses of all directors provided either in the accounts or at Companies House? Note: if the directors have been provided with an exemption from supplying this data and a properly notified service address is used a mark may still be given.	1	
TRANSPARENCY SUBTOTAL	*5*	
COUNTRY-BY-COUNTRY REPORTING		
6.a) Does the company disclose a full list of subsidiary companies stating their name and place of incorporation? b) Is the country of tax residence of each subsidiary disclosed, if different from place of incorporation? c) A further mark is given if a short description of the nature of the trade of the company is supplied.	1 1 1	

SUMMARY SCORECARD

CRITERIA	SCORE	NOTES
7. a) Does the company either disclose data on the net asset value or equity invested in each subsidiary or a consolidated total for this sum for each country in which it operates? b) Is data on either the net income or loss for the period provided for each of its subsidiaries or a consolidated total for this sum for each country in which it operates?	1 1	
8. Does the company either disclose the current tax charge made by each subsidiary for each trading period or a consolidated total for this sum for each country in which it operates?	1	
9. a) Does the company either disclose the average number of employees each subsidiary engages for each period together with a note on the basis of calculation used or a consolidated total for this sum for each country in which it operates? b) Is either the aggregate gross remuneration of the employees engaged during each period disclosed for each subsidiary together with a note of what the data disclosed includes or, alternatively, a consolidated total for this sum for each country in which it operates?	1 1	
10. Does the company provide consolidated data in its financial statements that at least differentiates UK trading and investment data as separate from data for all other territories?	2	
11. Does the company disclose trading data of the types noted in questions 7, 8 and 9 above on a consolidated basis by country with the totals reconciling to the group's consolidated accounts?	1 or 2 depending on scale of disclosure	
COUNTRY-BY-COUNTRY REPORTING SUBTOTAL	*12*	

SUMMARY SCORECARD

CRITERIA	SCORE	NOTES
TAX POLICY, IMPLEMENTATION AND COMPLIANCE		
12. Does the company have a tax compliance policy either on its web site or referred to in its accounts?	1	
13. Has the company appointed a named director to have responsibility for its tax policy?	1	
14. Does the company report on its effective compliance with this policy and is this referred to in the annual financial statements?	1	
15. Does the tax policy statement refer to: a) seeking to declare profits in the place where their economic substance arises? b) not using tax havens for tax avoidance purposes? c) not using marketed or abusive tax avoidance schemes likely to fall foul of the domestic tax avoidance legislation of any country in which the multinational company operates?	 1 2 2	
16. Does the company use tax havens either as locations for subsidiaries or for transactions? If no award 4 marks and this section is complete. If yes but it is clear that the use reflects the economic substance of transactions really located in the territory, award marks and this section is complete. If yes but it is disclosed that all such companies are UK tax resident, score 3 points	4 4 (if none for previous question) 3 (if none for previous questions)	
TAX POLICY, IMPLEMENTATION AND COMPLIANCE SUBTOTAL	*12*	

Fair Tax

SUMMARY SCORECARD

CRITERIA	SCORE	NOTES
TAX RATE AND DISCLOSURE		
17. Is the company's average tax rate within 1% (6), 1–3% (4.5), 3–5% (3) or 5–7% (1.5) of the expected headline rate? Grant up to 3 bonus points if the marks from questions 18, 19 and 20 when combined equal at least 6 in total.	6 *3	
18. a) Does the company provide a numerical tax reconciliation of its actual current tax charge to the current tax rate that might be expected for the year at the tax rate applying to the profits of the company? b) Does the company then reconcile its current tax charge with its total tax charge for the year by offering a reconciliation that explains the deferred tax provision for the year and other items that make up the difference? *Note: A bonus point may be added if at last 75% of the reconciling items in both parts of this process are precisely described e.g. using such phrases as 'The impact of capital allowance claims' or 'Reduced tax owing on capital gains arising'. Terms such as 'Other' or 'Losses' (without explanation being given) do not qualify in this respect.* *An additional bonus point may be given for disclosure of how variance in different national tax rates has affected the overall rate but reference to the countries where the main variances have arisen is essential if this point is to be awarded.*	2 2 1 1	
19. Does the company provide a narrative explanation as to why its current tax charge differs from the charge expected for the year at the tax rate applying to the profits of the company in its main place of residence?	2	

SUMMARY SCORECARD

CRITERIA	SCORE	NOTES
20 Does the company provide a deferred tax note that: – Explains the balance of those assets or liabilities with significant precision so that the cause of at least 75% of the asset or liability is clearly described? – States clearly when those assets or liabilities are likely in practice to have an impact on the company's tax bill or a statement that this is not known because it is more than five years after the balance sheet date?	1 1	
TAX RATE AND DISCLOSURE SUBTOTAL	*16*	
TOTAL OUT OF 45 (29 required for Fair Tax Mark)		

VI. Fair Tax Technical Group

The Fair Tax Mark is being advised by a group of technical experts. The members of this group are:

Kate Clements, *Chartered Accountant & Lecturer in Accounting, Heriot-Watt University*

Alex Cobham, *Economist, Centre for Global Development*

Paul Gibson, *Chartered Accountant, Mazars LLP*

Euan Grant, *Former Inspector, HMRC*

Jonathan Gray, *Director of Policy and Ideas, Open Knowledge Foundation*

Richard Lupson-Darnell, *Chartered Tax Advisor*

Richard Murphy, Tax Specialist, *Tax Research UK*

David Quentin, *Barrister*

VII. About Fair Tax

About us:

Fair Tax is a non-profit social enterprise that bridges the gap between corporate responsibility and the wider campaign to get companies to pay their fair share of tax.

We promote tax fairness as an integral part of a responsible business.

Our vision:

We strive for a future where all businesses are proud to contribute their fair share of tax to society and can prove it to all their stakeholders.

'Our aim is for all businesses to want to reap the benefits of a Fair Tax Mark.'

Our mission:

We encourage businesses and their stakeholders to make decisions that promote tax transparency and fairness.

Our core business:

Our core business is the Fair Tax Mark: an accreditation scheme that rewards businesses that are good taxpayers.

- We work with technical experts and other stakeholders to outline the standards that businesses need to achieve to become Fair Tax accredited.
- We work with businesses of all sizes, from independent high street shops to large multinationals, to help them achieve those standards.
- We work to raise public awareness of the Fair Tax Mark and accredited businesses in order to bring Fair Tax businesses and consumers together.
- We provide bespoke research and consultancy services.

VIII. Company Information and Notes

Fair Tax Mark Limited is a not-for-profit Community Benefit Society registered under the Industrial and Provident Societies Act No. 32308R

Fair Tax Mark Ltd. c/o ECRA

Unit 21, 41 Old Birley Street,

Manchester M15 5RF

info@fairtaxmark.net

www.fairtaxmark.net

Endnotes

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[i] http://www.ibe.org.uk/userfiles/pressreleases/attitudes2013.pdf

[ii] http://www.cbi.org.uk/media-centre/news-articles/2013/05/seven-tax-principles-for-uk-business-proposed-by-cbi/

[iii] http://www.taxjustice.net/cms/upload/pdf/Sustainability_taxing_issues.pdf

[iv] A company is legally permitted to submit abbreviated accounts if its turnover is less than £6.5 million, it has less than £3.26 million on its balance sheet or it has fewer than 50 employees

[v] Our definition of a tax haven is a country that scores above 65 on the Tax Justice Network Financial Secrecy Index http://www.financialsecrecyindex.com/introduction/fsi-2013-results

