May 13, 2016

RE: Statement by The ONE Campaign at IRS Public hearing on IRS REG-109822-15, "Country-by-Country Reporting"

On behalf of The ONE Campaign, I would like to commend the US Treasury Department and the Internal Revenue Service (IRS) for moving quickly to implement the US's international commitment to address Base Erosion and Profit Shifting, an important issue that holds considerable impact for citizens, both in the United States (US) and around the world. Thank you for the opportunity to appear before you today.

My name is Joseph Kraus, and I am Senior Policy Manager for Transparency & Accountability at The ONE Campaign. I hold a Ph.D. in Political Science and have spent more than a decade researching issues related to transparency and accountability, including tax, particularly as they impact on developing countries.

The ONE Campaign is an international advocacy and campaigning organization of more than 7 million people – including nearly 2.5 million in the US – taking action to end extreme poverty and preventable disease in some of the world's poorest countries. With offices spread across 3 continents, we have seen firsthand the negative consequences of tax avoidance by multinational corporations (MNCs), the scale of the problem, and the need for a global solution. Given the global nature of tax avoidance, it can be solved only by countries acting in concert, not by countries acting alone.

That is why we strongly support the implementation of country-by-country reporting (CBCR) standards for MNCs that result in an effective, global solution. To that end, I will focus my comments on the following two areas in which we believe the proposed rule could be strengthened to maximize its effectiveness:

1. Country-by-country reports should be publicly available
2. The reporting threshold should be lowered so that more companies are covered

<u>Country-by-country reports should be publicly available</u>

We believe that public disclosure of tax revenues is critical for enabling citizens to follow the money and ensure that taxes due are collected and spent appropriately. Profit shifting does not occur in a vacuum; rather, it relies on a complex web of interconnected companies initiating intracompany transactions across multiple jurisdictions. As you well know, unraveling these complicated structures can require considerable time, resources, and international cooperation. We have great respect and admiration for the tireless – and often thankless – work carried out by the Treasury Department and the IRS, often while relying on restricted budgets. Yet this problem is too big to be effectively resolved by resource-constrained tax authorities acting alone.

Thus, we see several significant advantages to requiring country-by-country reports to be accessible by the public. First, this would enable citizens, civil society organizations, journalists and government officials in both developing and developed countries to monitor the tax claims of MNCs. When citizens have access to this information and can better understand the tax agreements that their governments are entering into, they can hold governments accountable for negotiating fair terms and ensure that companies are paying all taxes owed. This could unlock much-needed funding for development in some of the world's poorest countries.

Second, making this information public would save tax authorities the burden of processing numerous information sharing requests from abroad and may deter companies from evading taxes. Under the standard outlined in the proposed rule, tax authorities in developing countries would only be able to access this information under cumbersome information exchange agreements for which many poor countries are not well equipped, and then only if they have an established tax treaty with the US. This would prevent a significant number of countries from gaining access to information critical for ensuring that MNCs doing business in their countries are, in fact, paying the full taxes they actually owe.

Third, CBCR provides investors with more comprehensive financial information about companies and helps them address investment risk more effectively. For this reason, investors with $10 trillion of assets under management have publicly supported the public disclosure of tax and other information in the extractive industries as part of the US's implementation of a provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Furthermore, a large body of scholarly research concludes that increased accounting and tax disclosures can significantly decrease the cost of capital for firms, with follow-on positive impacts for those firms' investors.

There are clear indications of support for public CBCR in the business community. A recent poll of business leaders by PwC (PriceWaterhouseCoopers) found 59% in favor of the public disclosure of revenues, profits and tax information on a country-by-country basis. Banks in the EU already disclose their country-by-country reports publicly under existing regulations, and a number of large banks, including HSBC and Barclays, as well as some tax accountants and economists, have been vocal champions of the merits of public CBCR.

In light of these clear benefits of public disclosure, it is troubling that the proposed rule suggests treating country-by-country reports as return information under Section 6103. As the proposed rule makes clear, Section 6103 imposes strict confidentiality rules with respect to all return information. This would preclude the ability of stakeholders beyond the IRS and Treasury to gain access to those documents now or in the future, even with the existence of a strong public interest case for doing so. The effective tax rates of corporations are a matter of public interest, and therefore should not be shielded behind secrecy. The advantages of establishing and operating a corporation are many – avoiding taxes and public scrutiny should not be among them.

While, as is noted in the proposed rule, the information exchange agreements to which the United States is a party require the information exchanged to be treated as confidential by both parties, this does not preclude the IRS or Treasury from requiring US MNCs to make those reports public, or for the agencies to publish those reports themselves, since they will not have been received via information exchange agreements.

The approach outlined in the proposed rule could also make it more challenging for the US to align its CBCR regime with those of other jurisdictions or the international community in the future should public disclosure become an established international standard. On this point, it is worth noting that the European Parliament has already approved public CBCR, and while the regulatory process in the EU is still ongoing, this position has the support of a number of EU member states, and a growing number of countries outside of the EU have expressed support for public CBCR as well.

There is already strong evidence that public access to country-by-country reports can be a game changer in exposing tax avoidance and altering the use of complex accounting structures to shift profits. A number of investigations by civil society organizations and investigative journalists have exposed the considerable lengths to which some MNCs have gone to avoid taxes. The fact that we are here today discussing this important problem and a proposed US rule to address it is due in no small part to those efforts by committed citizens to shine a light into what has – for far too long – been a blind spot in the global economy. It would be a true disservice and a bitter irony if the US government now decided to shield that long-fought for information behind the veil of confidentiality.

The reporting threshold should be lowered so that more companies are covered

The second issue we would like to discuss is the reporting threshold outlined in the proposed rule. We believe this threshold should be significantly lower than the proposed $850 million. According to the OECD's own estimates, this threshold would exclude 85% to 90% of all MNCs. While this threshold would capture the largest companies, there is no evidence that only those companies use profit shifting to avoid taxes. Furthermore, in some countries – particularly in the developing world – companies smaller than the proposed threshold can have a significant impact on government revenues.

We note that related provisions have much lower – or no – reporting thresholds. For instance, the US law requiring CBCR in the extractives sector referenced earlier does not mandate a threshold, and the Securities and Exchange Commission (SEC) has not suggested any threshold in its proposed implementing rule. Similar laws passed in the EU and Canada have no reporting thresholds for publicly listed companies, and thresholds of €40 million and CAN$40 million, respectively, for private firms. We recommend that the IRS and Treasury align the US threshold with these other existing initiatives, thereby ensuring that the vast majority of MNCs are required to report.

As a global leader in transparency, the US has the opportunity to establish a strong standard for CBCR. The world will be closely watching how the US adopts and implements the OECD's base-and-erosion profit shifting proposal. We urge you to do so in a way that maximizes the effectiveness of CBCR and enables citizens and governments here and abroad to hold MNCs accountable for paying the taxes they owe.

Thank you for your hard work on this important issue, and for the opportunity to speak here today.

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