

May 30, 2023

Richard R. Jones, FASB Chair
Hillary H. Salo, Technical Director
File Reference No. 2023-ED100
801 Main Ave, PO Box 5116, Norwalk, CT 06856-5116.

Re: File Reference No. 2023-ED100: Proposed Accounting Standards Update, Income Taxes (Topic 740); Improvements to Income Tax Disclosures

Submitted electronically via director@fasb.org

Dear Chair Jones, Director Salo, and Members of the Board,

The Financial Accountability and Corporate Transparency (FACT) Coalition appreciates the opportunity to offer comments on the Financial Accounting Standards Board's (FASB) Proposed Accounting Standards Update regarding Improvements to Income Tax Disclosures (File Reference No. 2023-ED100).¹ The following letter responds to questions 1a, 1c, 4, and 10 of FASB's invitation to comment.

While FACT is encouraged by FASB's recognition that existing income tax disclosures do not provide sufficient detail for investors to assess global tax and other operating risks stemming from the international practices of multinational enterprises (MNEs), the proposed revisions to Topic 740 fall short of providing a clear, complete picture of a given MNEs tax activities and potential exposures. Investors with more than \$10 trillion in assets under management have endorsed full public country-by-country (CbC) reporting to inform their investment decisions.² Particularly in light of the upcoming implementation of the European Union's public country-by-country reporting regime³ and the anticipated passage of expanded CbC reporting

¹ Financial Accounting Standards Board (March 15, 2023), "Proposed Accounting Standards Update, Income Taxes (Topic 740), Improvements to Income Tax Disclosures,

[https://www.fasb.org/document/blob?fileName=Proposed%20Accounting%20Standards%20Update%E2%80%94Income%20Tax%20\(Topic%20740\)%E2%80%94Improvements%20to%20Income%20Tax%20Disclosures.pdf](https://www.fasb.org/document/blob?fileName=Proposed%20Accounting%20Standards%20Update%E2%80%94Income%20Tax%20(Topic%20740)%E2%80%94Improvements%20to%20Income%20Tax%20Disclosures.pdf)

² Oxfam America (May 10, 2023), "Methodological note and list of investors, \$10 trillion AUM in support of pCbCR", https://webassets.oxfamamerica.org/media/documents/10tril_AUM_Methodology_Note.pdf?_gl=1*wvdgs8*_ga*MTIwNjQ5MDE2OC4xNjgyNjMwNTQ5*_ga_R58YETD6XK*MTY4MzgxMjA5OS40LjAuMTY4MzgxMjA5OS42MC4wLjA

³ Official Journal of the European Union (November 24, 2021), "DIRECTIVE (EU) 2021/2101 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches,"

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L2101&from=EN>

requirements in Australia⁴ that are expected to affect U.S.-based MNEs, FASB should consider the changes detailed below in order to maximize the decision-usefulness of information required by its proposed income tax disclosure revisions.

Background

The Financial Accountability and Corporate Transparency Coalition is a non-partisan alliance of more than 100 state, national, and international organizations⁵ working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices. FACT has supported various efforts, both domestically and globally, to better arm investors, lawmakers, and the public with needed information surrounding the tax and operational practices of large MNEs.⁶

While a growing number of MNEs around the globe are voluntarily reporting key tax information under the standards developed by the Global Reporting Initiative⁷ (GRI), others have faced mounting pressure from shareholders to begin public disclosures.⁸ Major jurisdictions are also now advancing public tax transparency regimes: the European Union passed legislation mandating limited public CbC reporting in 2021, and Australia is expected to pass the world's first public CbC reporting legislation with the potential to affect entities headquartered around the globe in the coming months.

As global momentum continues to mount for public CbC reporting, the risk of information asymmetries resulting from multiple competing regimes across jurisdictions is real. While certain major U.S. MNEs are likely to begin public reporting in 2025 under both the EU and Australian regimes, the need for a consistent standard to minimize information asymmetry and ease

⁴ Department of the Treasury (April 6, 2023), "Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes", https://treasury.gov.au/sites/default/files/2023-04/c2023-383896-ed_0.pdf

⁵ A full list of FACT members is available at: Financial Accountability and Corporate Transparency (FACT) Coalition, "Coalition Members," 2023, <https://thefactcoalition.org/about-us/coalition-members-and-supporters/>

⁶ See FACT Coalition (April 6, 2023), "FACT Applauds Australia's Introduction of Groundbreaking Tax Transparency Legislation with Global Reach,"

<https://thefactcoalition.org/fact-applauds-australias-introduction-of-groundbreaking-tax-transparency-draft-legislation-with-global-reach/>; FACT Coalition (March 2, 2023), "FACT Welcomes Reintroduction of Legislation to Shine a Light on Corporate Tax Dodging Practices,"

<https://thefactcoalition.org/fact-welcomes-reintroduction-of-legislation-to-shine-a-light-on-corporate-tax-dodging-practices/>;

FACT Coalition (December 21, 2022), "Microsoft, Cisco Shareholder Votes Demonstrate Increasing Investor Demand for Tax and Offshore Transparency,"

<https://thefactcoalition.org/microsoft-cisco-shareholder-votes-demonstrate-increasing-investor-demand-for-tax-and-offshore-transparency/>; FACT Coalition (December 8, 2022), "Securities and Exchange Commission Should Require Increased Tax Transparency for U.S.-Listed Multinationals, FACT Coalition Tells Investor Committee,"

<https://thefactcoalition.org/securities-and-exchange-commission-should-require-increased-tax-transparency-for-u-s-listed-multinationals-fact-coalition-tells-investor-committee/>

⁷ Global Reporting Initiative (September, 2019), "GRI 207: Tax,"

<https://www.globalreporting.org/standards/media/2482/gri-207-tax-2019.pdf>

⁸ See FACT Coalition (December 21, 2022), "Microsoft, Cisco Shareholder Votes Demonstrate Increasing Investor Demand for Tax and Offshore Transparency,"

<https://thefactcoalition.org/microsoft-cisco-shareholder-votes-demonstrate-increasing-investor-demand-for-tax-and-offshore-transparency/>; FACT Coalition (July 2022), "A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting,"

<https://thefactcoalition.org/report/a-material-concern-the-investor-case-for-public-country-by-country-tax-reporting/>

reporting burdens is clear. Given that large multinational filers in the U.S. already provide non-public CbC reports to the IRS in line with OECD BEPS action 13,⁹ full public CbC reporting in line with international best practices represents not only the most useful, but also the most efficient solution to this growing problem.

Nevertheless, the proposed revisions to rate reconciliation and income taxes paid disclosures that are the subject of this comment represent an imperfect step towards greater transparency for U.S. filers. While FASB is limited to advancing measures pertaining to Generally Accepted Accounting Principles (GAAP) metrics, and as such may not be prepared to advance full public CbC reporting requirements, the changes detailed below would further enhance the usefulness of these revised disclosures for investors and other users of financial statements within FASB's remit of developing GAAP metrics. Meanwhile, the United States Securities and Exchange Commission can, and should, begin the rulemaking process to require public CbC reporting for large filers, working parallel to and in complement with FASB's efforts.

Question 1

a.) Inclusion of the proposed specific categories¹⁰ in income tax disclosures would dramatically improve the ability of investors and other users to assess tax exposure risks associated with a given MNE. In particular, disaggregation by nature and jurisdiction of foreign tax effects will provide clear evidence of aggressive tax practices and potential exposure to jurisdictional tax reforms and other regulatory developments.

In order to best inform investors and other users of financial statements, however, FASB should consider requiring disaggregated disclosure of revenues (both third-party and related-party), income (or loss), and effective tax rates for jurisdictions that meet the 5 percent threshold. In its Basis for Conclusions, FASB notes that "Some investors provided feedback that additional jurisdictional information related to an entity's revenue, operating results, and income tax expense (or benefit) would allow for a more thorough understanding of an entity's business opportunities and exposures," but elected not to require this information in its proposed revisions on the basis that "addressing a broader request for jurisdictional information would be beyond the scope of an income tax disclosure project and may significantly delay the progress of the project."¹¹

⁹ Organization for Economic Co-operation and Development (2015), "Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project," <https://doi.org/10.1787/9789264241480-en>

¹⁰ Financial Accounting Standards Board (March 15, 2023), "Proposed Accounting Standards Update, Income Taxes (Topic 740), Improvements to Income Tax Disclosures," Section 740-10-50-12A, Subsections a-c, [https://www.fasb.org/document/blob?fileName=Proposed%20Accounting%20Standards%20Update%E2%80%94Income%20Taxes%20\(Topic%20740\)%E2%80%94Improvements%20to%20Income%20Tax%20Disclosures.pdf](https://www.fasb.org/document/blob?fileName=Proposed%20Accounting%20Standards%20Update%E2%80%94Income%20Taxes%20(Topic%20740)%E2%80%94Improvements%20to%20Income%20Tax%20Disclosures.pdf)

¹¹ Financial Accounting Standards Board (March 15, 2023), "Proposed Accounting Standards Update, Income Taxes (Topic 740), Improvements to Income Tax Disclosures," *Basis for Conclusions - Scope*, Section BC12, Subsection a

Income and revenues are essential metrics by which investors may gauge the extent of real operations of an MNE in a given jurisdiction, and thereby assess both opportunities and exposures related to geopolitical, operational, tax and other risks for the purposes of capital allocation.¹² Though investors and other users may still be able to back out this information for particular jurisdictions with the data provided by the revised rate reconciliation table outlined in FASB's proposal, in many instances users may not be able to determine the extent or particular nature of revenues generated in a given jurisdiction of interest. Investors and other users of financial statements are keen to see additional detail regarding where revenues are generated in light of geopolitical risks manifesting in real time, as well as due to international tax reform efforts, including through the OECD/G20 Inclusive Framework process. Without knowing where revenues are generated, investors are left in the dark with regards to the potential ramifications of such risks and developments that may meaningfully impact the bottom line, resulting in potential inefficiencies in capital allocation.

c.) FACT agrees that the quantitative 5 percent threshold for disaggregated reporting under FASB's proposed revisions represents a reasonable balance between providing useful information to investors and minimizing compliance burdens for affected entities as it relates to the rate reconciliation table proposal. A given MNE may, however, still face substantive tax enforcement and reform-related risks in jurisdictions that do not meet the proposed 5 percent threshold, and these risks are necessarily passed on to investors. A lower threshold would help to provide investors with a clearer picture of a given MNE's tax structure, resulting in more efficient capital allocation.

Considering this, FACT encourages FASB to either maintain as proposed or, preferably, lower this threshold in its final updates to Topic 740, and not to further limit the scope of the proposed disclosures through a higher quantitative threshold.

Question 4

As argued in the response to Question 1a above, the proposed amendments to the rate reconciliation table would increase the amount of decision-useful information available to investors and other users of income tax disclosures, allowing them to better assess tax exposure risks associated with a given MNE. Disaggregated reporting of foreign tax effects, and particularly tax rate differentials, on a country-by-country basis for those jurisdictions which represent a significant portion of the gap between a given MNE's overall effective tax rate and the applicable statutory tax rate of its country of domicile may help end users to identify aggressive transfer pricing and other offshoring practices, and lead to more informed capital allocation decisions.

¹² FACT Coalition (July 2022), "A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting," <https://thefactcoalition.org/report/a-material-concern-the-investor-case-for-public-country-by-country-tax-reporting/>

As will be discussed further below, FACT strongly recommends that FASB add disaggregated disclosure of revenues (third party and related party), income (or loss), and effective tax rates to its proposed revisions. Doing so is consistent with the categories of information MNEs are already preparing to satisfy CbC reporting requirements under OECD's BEPS Action 13. A more complete presentation of this information can create more readily comparable – and thus more decision-useful – reporting, including with respect to emerging standards across jurisdictions.

FASB argues in its Basis for Conclusions that “such reporting is beyond the objective of general purpose financial reporting, which is to provide financial information about the reporting entity that is useful to existing and potential investors in making decisions about providing resources to the entity,” and notes that CbC reporting generally includes non-GAAP metrics.¹³ While it is reasonable that FASB might not wish to require disclosure of certain CbC metrics, such as number of employees, the additional disclosures recommended above, including revenues (both third-party and related-party) and net income (or loss), are both consistent with GAAP and germane to the capital risk concerns outlined in FASB's proposed revisions.

In addition to its proposed revisions to the rate reconciliation table, incorporating the changes detailed above, the Board should consider additional, supplementary disclosures of CbC metrics that it deems to be consistent with GAAP.

Question 10

The proposed amendments to the income taxes paid disclosure would provide a limited amount of decision-useful information for investors. However, information on net income taxes paid, even in those jurisdictions that fall within the 5 percent threshold and qualify for disaggregated reporting, does not serve to paint a clear picture of a given MNE's tax practices and exposures, or operational and other risks. When combined with information on the revised rate reconciliation table, investors may be able to glean new insights from the enhanced income taxes paid disclosures (as jurisdictions that fall within the 5 percent threshold are likely to represent the large market jurisdictions in which a given MNE maintains a substantial portion of its real operations and generates a substantial percentage of its revenues) but far too much guesswork remains in the absence of concrete information pertaining to revenues and income, disaggregated by jurisdiction.

At a minimum, FASB should consider tying disaggregated income tax disclosures to other disclosures contemplated in its proposed revisions to Topic 740, requiring information on income taxes paid for both any jurisdiction that falls within the 5 percent threshold *as well as* for jurisdictions that appear in a disaggregated fashion under the “foreign tax effects” section of the revised rate reconciliation table.

¹³ Financial Accounting Standards Board (March 15, 2023), “Proposed Accounting Standards Update, Income Taxes (Topic 740), Improvements to Income Tax Disclosures,” *Basis for Conclusions - Scope*, Section BC12, Subsections b.1-2

An approach aimed at providing investors with the maximum amount of decision-useful information, however, would require MNEs to report on income taxes paid in each of the jurisdictions in which a minimum threshold amount of its revenue and income are booked, rather than those jurisdictions in which a minimum threshold of taxes are paid. This information should include not only cash taxes paid in a given jurisdiction, but also information regarding third-party and related-party revenues, and net income (or loss). After all, investors and other users of financial statements will find this information most useful when they are able to understand the tax and results (or income and loss) of the MNE in light of the reported operational presence or activity of the MNE, as best demonstrated by revenue and other public CbC reporting metrics (such as tangible and intangible assets – the latter being required to be disclosed under the current proposed Australian public CbC reporting proposal).

Alternatively, FASB could require this information through the application of public CbC reporting requirements for GAAP metrics, as described in the response to question 4 above.

Conclusion

FASB's efforts to require more disclosures of tax data from U.S. filers represent an improvement on current disclosure requirements and will help to better inform investors and other users of income tax data as to the risks and opportunities stemming from the tax and operational practices of MNEs. **Despite the value of these proposed revisions, however, FASB should provide investors with the complete, comparable, and decision-useful information for which they have increasingly been asking. FASB should consider both the changes to its proposal detailed above, as well as additional, supplementary disclosure requirements of CbC data for multinational filers.** FASB should also consider prioritizing its rate reconciliation proposal to ensure effective implementation within a reasonable timeframe. Reconsideration and improvement of the income taxes paid proposal (including to also require reporting based on revenue and income or loss), should not delay the rate reconciliation proposal.

Thank you for your consideration of these comments. The FACT Coalition would be happy to discuss these comments at your convenience. Please contact Ian Gary (igary@thefactcoalition.org) with any questions or concerns.

Respectfully submitted,

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