FACTCOALITION
Financial Accountability & Corporate Transparency

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The Honorable John Koskinen
Commissioner
Internal Revenue Service
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Mr. Mark J. Mazur
Acting Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: IRS REG-109822-15: Country-by-Country Reporting

Dear Commissioner Koskinen and Mr. Mazur:

The purpose of this letter is to express strong support for, and recommend several measures to further strengthen and clarify, the proposed rule on Country-by-Country Reporting.[1] The U.S. Treasury Department and Internal Revenue Service (IRS) are to be commended for the prompt issuance of this proposed rule to implement, in a timely fashion, the United States' global commitment to require country-by-country reporting by U.S. multinationals.

This comment is submitted by the Financial Accountability and Corporate Transparency (FACT) Coalition. Founded in 2011, the Financial Accountability and Corporate Transparency (FACT) Coalition unites over 100 different civil society representatives from small business, anti-corruption, faith-based, government watchdog, human rights, investors, labor, public-interest, and international development organizations from across the ideological spectrum.[2] The coalition seeks an honest and fair international tax code, greater transparency in corporate ownership and operations, and commonsense policies to combat the facilitation of money laundering and other criminal activity by the financial system.

[1] See 80 Federal Register 246 (12/23/2015), at 79795.
[2] A list of FACT members is available at http://thefactcoalition.org/about/coalition-members-and-supporters/.

In addition to supporting the need for the proposed rule, we make the following recommendations to strengthen or clarify its provisions: (1) requiring U.S. parent entities to provide country-by-country (CbC) Reporting for constituent entities that are accounted for under the equity method as well as for those included in the parent's consolidated financial statements; (2) correcting a possible technical drafting error in Section 1.6038-4(d)(2)(iv); (3) adding deferred taxes and uncertain tax provisions as data elements in the CbC Report; (4) requiring each parent entity filing a CbC Report to provide, in addition to a Taxpayer Identification Number, an international Legal Entity Identifier for itself and each constituent entity; (5) allowing U.S. multinational groups to count as employees only those individuals for whom they pay payroll, social security, or other employment taxes; (6) requiring multinationals to perform an internal reconciliation or, at a minimum, retain the work papers needed to substantiate its CbC Report data; (7) requiring CbC Reports to be publicly available; (8) declining to create a national security exception to CbC reporting; (9) treating CbC Reports as Treasury reports rather than tax return information; (10) mandating issuance of an annual public summary containing aggregated information from the CbC Reports; and (11) sharing CbC information through the multilateral exchange agreement created for that purpose instead of through the U.S. network of bilateral tax agreements.

Structure of this Comment. This comment is divided into four parts. Part I will provide background on why this initiative is so important. Part II will discuss the scope of the reporting, including entities for which CbC Reports will be filed and the details of those Reports. Part III will discuss the legal basis for this rulemaking and accessibility of CbC information generally. Part IV will discuss how the United States will engage with other countries to provide access to U.S. CbC Reports.

Public Hearing. The proposed rule requests comment on the need for a public hearing. Given the years of work and public interaction that have already gone into the issue of country-by-country reporting, we do not feel that such a hearing is necessary.

PART I: Background

The proposed rule is the culmination of a multi-year effort by many in the international community, including the United States, to shed light on the business and tax practices of large multinational groups that operate in multiple countries.[3] The motivating factor behind this international effort to obtain more accurate, comprehensive, and timely data on multinational business and tax practices is the overwhelming evidence that many multinationals systematically shift profits to jurisdictions where they pay little or no tax. Evidence, taken from investigations conducted by legislatures, tax administrations, journalists, and non-profit organizations around the world, demonstrates that multinationals are using a variety of tactics to pull profits out of both developed and developing countries and move those funds to

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[3] See *OECD/G20 Base Erosion and Profit Shifting Project Explanatory Statement*, Organization for Economic Cooperation and Development (2015), http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf.

jurisdictions offering low tax rates and sweetheart tax deals not available to their competitors.[4] A recent IMF Working Paper estimated that the long-run revenue loss from this type of profit-shifting was approximately 0.6% of GDP for OECD countries and 1.7% of GDP for developing countries.[5]

Profit-shifting by multinationals is a particularly acute problem in the United States. One recent estimate found that profit shifting has likely cost the U.S. government between $77 and $111 billion in corporate tax revenues from 1983 to 2012, with tax revenue losses increasing substantially in recent years.[6] This type of tax dodging erodes the U.S. tax base, negatively impacts U.S. and state budgets, increases the deficit, and limits funds available for commercially important services like producing an educated workforce, maintaining America's infrastructure, and financing U.S. courts and law enforcement. It also contributes significantly to an uneven playing field for America's small businesses. Profit shifting drains money out of developing countries the same way, undercutting U.S. foreign aid efforts, exacerbating global poverty, and contributing to the economic instability that leads to extremism and terrorism. World Bank President Jim Yong Kim recently likened corporate profit-shifting to corruption, stating: "Some companies use elaborate strategies to not pay taxes in countries in which they work, a form of corruption that hurts the poor."[7]

The United States and its OECD and G20 partners decided that a first step towards countering multinational corporate tax dodging through profit-shifting would be to collect hard data on where multinationals are conducting business, declaring profits or losses, and paying taxes. They collaborated on and agreed a set of standards and guidelines, under the aegis of

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[4] See, e.g., U.S. Senate Permanent Subcommittee on Investigations reports and hearings, "Offshore Profit Shifting and the U.S. Tax Code – Part 1 (Microsoft and Hewlett-Packard)," S. Hrg. 112-781 (9/20/2012), https://www.gpo.gov/fdsys/pkg/CHRG-112shrg76071/pdf/CHRG-112shrg76071.pdf; "Offshore Profit Shifting and the U.S. Tax Code - Part 2 (Apple Inc.)," S. Hrg. 113-90 (5/13/2013), https://www.gpo.gov/fdsys/pkg/CHRG-113shrg81657/pdf/CHRG-113shrg81657.pdf; "Caterpillar's Offshore Tax Strategy," S. Hrg. 113-408 (4/1/2014), https://www.gpo.gov/fdsys/pkg/CHRG-113shrg89523/pdf/CHRG-113shrg89523.pdf; "Tax Avoidance – Google," London: House of Commons, Committee of Public Accounts, 9th Report 2013-14, http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/112/112.pdf; "Special Report: How Starbucks avoids UK taxes," UK Parliament Committee on Public Accounts, Minutes of Evidence, HC 716, Session 2012-13; Tom Bergin, (10/15/ 2012), http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/121112.htm; "Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules," European Commission press release, No. IP/15/5880 (10/21/2015), http://europa.eu/rapid/press-release_IP-15-5880_en.htm; "Corporate tax avoidance," report by Australian Senate Committee on Economics References, No. ISBN 978-1-76010-274-6 (8/18/2015), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Report_part_1.

[5] *Base Erosion, Profit Shifting and Developing Countries*, IMF Working Paper WP/15/118, Crivelli, E., De Mooij, R., and Keen, M. (2015).

[6] *The Effect of Profit Shifting on the Corporate Tax Base in the United States and Beyond,* Kimberly Clausing (1/11/2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685442.

[7] Speech before the Institute for Peace, Jim Yong Kim (10/1/2015), http://www.worldbank.org/en/news/speech/2015/10/01/speech-world-bank-group-president-shared-prosperity-equal-opportunity.

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the Base Erosion and Profit Shifting Initiative, which, among other things, requires the parent entities of multinational groups to report certain business and financial data to their home countries on a country-by-country basis. This information, collected in CbC Reports, would then be shared among tax authorities worldwide so that all governments could build a better factual foundation for analyzing multinational tax practices. Because multinational profit-shifting and tax avoidance necessarily involves more than one country, it is not a problem that the United States or any other country can analyze or solve alone. Moreover, as home to many of the large multinationals engaging in questionable profit-shifting and tax practices, U.S. implementation of its commitment to collect CbC Reports from its multinationals is critical to tackling both the U.S. and global tax problem.

While the proposed rule adheres closely to the OECD standards that the United States participated in developing and agreed to implement, it also takes advantage of the areas in which countries were given some discretion in implementation. In addition, the United States has the opportunity to adopt a rule that would do more to tackle the profit-shifting problem than the consensus-based OECD standards.

PART II: Scope of Reporting, Constituent Entities, Information to Be Provided

Defining Constituent Entities Subject to CbC Reporting. The proposed rule defines a U.S. multinational group for which a CbC Report must be filed as "a group of business entities, including the U.S. business entity that is the ultimate parent entity, that are required to consolidate their accounts under U.S. GAAP [Generally Accepted Accounting Principles], or would be required to consolidate their accounts if equity interests in the ultimate parent entity were publicly traded on a U.S. securities exchange."[8] The proposed rule continues: "Generally, under U.S. GAAP, if an entity owns a majority voting interest in another legal entity, the majority owner must combine the financial statements of the majority-owned entity with its own financial statements in consolidated financial statements," based on Financial Accounting Standards Board (FASB) Accounting Standards Codification (ACS) 810-10-15, "Consolidation—Overall—Scope and Scope Exceptions." The proposal also cautions that a U.S. multinational group "does not include business entities that are accounted for under the equity method (because those entities do not consolidate their accounts with the equity owner), notwithstanding that the equity owner's proportionate share of the business income of such entities is included in the equity owner's consolidated financial statements."

The above definition means that, generally, parent entities may exclude from their CbC Reports any information related to a constituent entity in which the parent entity has a 50% or less ownership interest, even if the parent includes income from that entity in its financial statements. It is unclear why the proposed rule drew the line on reporting at 50% instead of applying the equity method threshold of 20%. If the final rule were to require parent entities to include in their CbC Reports constituent entities that are accounted for under the equity

[8] 80 Federal Register 246 (12/23/2015), at 79797.

method, meaning entities in which the parent entity has, directly or indirectly, a 20% or greater equity interest, the final rule would provide a much more comprehensive view of the multinational group's business and profit-shifting practices. Under U.S. GAAP, a 20% or greater equity interest triggers a *presumption* that the investor has the ability to exercise "significant influence" over the entity and that the entity should be accounted for in the investor's financial statements, absent predominant evidence that such control does not exist.[9] In other words, U.S. multinationals are already required to both identify and account for constituent entities over which they have significant influence pursuant to equity method accounting, so no additional accounting burden would be imposed if this broader approach were taken.

In addition, using the 20% ownership threshold would also be more in line with the rest of the world. International Financial Reporting Standards (IFRS), the accounting standards used by the vast majority of countries and which some foreign multinationals use in the United States, requires accounting for constituent entities in a manner that is very similar to GAAP's equity method.[10] As a result, most countries should be requiring CbC reporting for constituent entities within a multinational group down to the 20% equity interest level. To ensure U.S. CbC reporting is comparable to the reporting that will be provided by multinationals globally, the final rule should require U.S. parent entities to report information for all of its constituent entities accounted for under the equity method.

We strongly recommend that the final rule require U.S. parent entities to provide CbC reporting for constituent entities that are accounted for under the equity method as well as for those included in consolidated reporting. Even laying aside concerns about international comity and comparability, the aim of the U.S. CbC reporting rule is to provide factual information about how large U.S. multinational groups allocate business resources, employees, and capital compared to how it allocates its profits, losses, and taxes on a country-by-country basis. Including that per country information for entities over which a multinational parent entity has significant influence would go a long way toward providing a complete and accurate picture of the facts.

In light of recent corporate inversion activity, we also encourage you to consider requiring CbC Reports for the MNE group entities described above from any U.S. entity that exercises the mind and management functions of any MNE group in which the foreign parent of the MNE group is tax resident in a jurisdiction that does not require substantially equivalent reporting.

The $850,000,000 Reporting Threshold. The proposed rule requires only MNE groups with revenues of $850,000,000 or greater during the preceding annual accounting period to provide CbC reporting information. We recommend that this threshold be reduced to $45,000,000 in gross revenues, in line with similar recommendations made by civil society

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[9] See U.S. GAAP Accounting Standards Codification (ASC) 323-10-15-8.
[10] See International Accounting Standard (IAS) 28.

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groups in Europe to proposed European legislation to implement the same part of the BEPS agreements. European civil society organizations have recommended that the CbC reporting threshold be set at €40,000,000, the same level for publicly available country-by-country and project-by-project level reporting of payments made to governments by multinational companies operating in the extractive industries under the European Accounting Directive.[11] The European Accounting Directive is one of the legal instruments implementing a European version of Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1504), which requires similar public reporting by U.S. multinationals operating in the extractive industries.[12] Although the implementing regulations for Section 1504 have not yet been finalized, the U.S. Securities and Exchange Commission (SEC) has not proposed that any revenue, capitalization or other size-based reporting threshold be applied in the United States; all U.S. entities operating in the extractive industries that are required to file annual reports with the SEC would be required to file country-by-country and project-by-project reports of payments they, their subsidiaries, and entities under their control have made to any government anywhere in the world.[13]

The proposed $850,000,000 threshold is intended to align with the OECD's recommended threshold of €750,000,000 in gross revenues. However, the OECD's own calculations showed that this very high threshold would exclude between 85-90% of all multinational entities from these reporting requirements.[14] The OECD justifies this significantly exclusionary approach by stating that the companies that would be required to report under this threshold control nearly 90% of corporate revenues.[15] Because the raw data needed to conduct similar analysis with respect to U.S. companies specifically is not available to the American public, we respectfully request that the Treasury and IRS provide information in the explanatory text of the final rule that identifies the number and percentage of U.S. entities with more than one (i) foreign subsidiary, or (ii) foreign entity over which is has significant influence, that would be required to provide CbC Reports under the threshold adopted in the final rule, and the percentage of gross revenues for such internationally operating U.S. corporate groups that threshold would represent.

U.S. Template for Form XXXX. The proposed template for Form XXXX, the U.S. Country-

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[11] Eurodad, et al. (2015). *Fifty Shades of Tax Dodging: the EU's role in supporting an unjust global tax system*, p. 18, 38, available at http://www.eurodad.org/files/pdf/1546494-fifty-shades-of-tax-dodging-the-eu-s-role-in-supporting-an-unjust-global-tax-system.pdf. Note that the Accounting Directive reporting threshold is met when companies meet to of the following three criteria: at least 40 mil annual revenue; at least 20 mil annual balance sheet total; on average more than 250 employees.

[12] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), Section 1504.

[13] See Securities and Exchange Commission, Release No. 34-76620; File No. S7-25-15, Proposed Rule on the Disclosure of Payments by Resource Extraction Issuers, available at http://www.sec.gov/rules/proposed/2015/34-76620.pdf.

[14] OECD, (2015). *Action 13: Guidance on the implementation of transfer pricing documentation and country-by-country reporting*, p. 4, available at https://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf.

[15] Id.

by-Country Report, is concise, well organized, and consistent with the international template developed with U.S. input and supported by G20 world leaders. Because the U.S. CbC Report elicits information from businesses that operate across international lines, it is critical that it uses data elements and a format that is comparable to what is being used in other countries in order to facilitate efficient data collection and analysis. Using the same data elements and format as other countries will also minimize the reporting burden placed on the parent entities required to file the reports.

One provision of the proposed rule describing the information to be provided in Form XXXX, however, seems to contain an internal contradiction that may be the result of a technical drafting error. Section 1.6038-4(d)(2) states that the U.S. form will contain information "with respect to **each tax jurisdiction**" but its subsection (iv) requires the reporting of: "Total income tax paid on a cash basis to **all tax jurisdictions**." The reference to "all tax jurisdictions" could be misinterpreted to mandate or allow the required tax information to be reported on an aggregated basis for all jurisdictions as opposed to being reported on a country-by-country basis, as intended. To avoid any confusion, the provision in subsection (iv) should be clarified to read: "Total income paid on a cash basis to **each tax jurisdiction**."

Finally, while we strongly support Form XXXX's using the same data elements and format as the comparable forms being used by other countries, we also support adding two new columns to the second chart to capture tax data that is unique to U.S. tax law. Currently, the proposed rule explicitly excludes deferred taxes and provisions for uncertain tax positions from calculation of the accrued tax expense to be recorded by multinational parent entities on Form XXXX. While that approach makes sense, information regarding a multinational's deferred taxes and uncertain tax positions offers extremely useful data in evaluating its tax practices. Multinationals often shift profits to other countries and then defer the payment of taxes on those profits, making deferred tax information a possible indicator of profit shifting and, over time, a marker of any changes in profit-shifting patterns. In addition, the U.S. tax code now requires multinationals to take a provision for an uncertain tax position when it is more likely than not that the tax position would not survive an IRS challenge.[16] Provisions for uncertain tax positions are, thus, clear indicators of the extent to which a multinational is operating in gray areas and may be engaging in aggressive or abusive tax practices, including with respect to transfer pricing. Due to the unique and highly useful nature of corporate information related to deferred taxes and uncertain tax provisions, and because those figures are already calculated on an annual basis and can be added at virtually no cost to the CbC Report, we recommend that both data elements be added to Form XXXX.

Counting Employees. The proposed rule requires parent entities to provide, on a country-by-country basis, the aggregate number of employees working for the multinational

[16] See Financial Accounting Standards Board (FASB) Interpretation No. 48, http://www.fasb.org/cs/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1175820931560&blobheader=application%2Fpdf.

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group "on a full-time equivalent basis" in each jurisdiction.[17] The proposed rule provides general guidance on how to derive that number while also requesting comment on whether additional guidance is needed.

The proposed rule currently provides significant flexibility. It states, for example, that a parent entity may determine the number of its employees "as of the end of the accounting period, on the basis of average employment levels for the annual accounting period, or on any other reasonable basis," provided that the parent uses the same methodology "on a consistent basis across entities, tax jurisdictions … and from year to year."[18] Any changes in the methodology must be disclosed and explained in the CbC Report. That approach provides a cost-effective and flexible way to minimize costs for the filing entities.

At the same time, one key issue, the treatment of "independent contractors," is treated in such a cavalier fashion as to encourage reporting that may be difficult to understand, contradictory, and even misleading. Currently, the proposed rule states that a parent entity "may" count as its employees the "independent contractors that participate in the ordinary operating activities of a constituent entity."[19] It offers no additional guidance on the meaning of "independent contractor" or "ordinary operating activities." By leaving it up to multinational groups on how to interpret those phrases and whether or not to treat certain independent contractors as employees, the proposed rule introduces unnecessary uncertainty into the data and allows widely varying approaches to a factor that could have a significant impact on employment totals. In addition, the approach creates a legal and logical inconsistency in that the U.S. tax code currently has a detailed body of law distinguishing between "independent contractors" and "employees" for tax purposes, while the rule proposes to allow professed "independent contractors" to be treated as "employees" on the CbC Report. This approach promises to confuse U.S. tax law in an area that is already highly contested.

Still another problem, of particular significance in multinational tax practice, involves constituent entities organized or operated in tax havens. One common tax avoidance tactic is for multinationals to form shell entities in tax havens and hire corporate service providers, law firms, or financial institutions to provide the shell entities' with a president, manager, or other officer. Allowing the parent entity to treat those hired individuals as "employees" would not only artificially inflate its employment figures in the tax haven, but also completely distort the meaning of the word "employee." The same would be true if the parent entity were to hire, for example, a local, self-employed accountant to prepare the shell entity's annual financial statement, deeming that hire to be an "independent contractor." Since preparing financial

[17] 80 Federal Register 246 (12/23/2015), at 79798.
[18] 80 Federal Register 246 (12/23/2015), at 79798-99.
[19] 80 Federal Register 246 (12/23/2015), at 79799.

paperwork could be seen as part of the shell entity's "ordinary operating activities," the parent entity could conceivably claim the accountant as one of its "employees," further distorting the meaning of the word, inflating the parent's employment numbers, and creating a misleading picture of its offshore operations.

To avoid that type of misleading, contradictory, and difficult to understand employment data, the final rule should allow U.S. multinational groups to count as employees only those individuals for whom the company pays payroll, social security, or other employment taxes. That approach would enable Treasury and the IRS to maintain a consistent approach to defining "employees" versus "independent contractors," and avoid injecting new ambiguities into an area already rife with controversy.

Naming Constituent Entities. The proposed U.S. template seems to indicate that the parent entity filing the form will be required to list the names of each of its constituent entities in the first chart. The proposed rule also requests comment on whether additional guidance should be provided on "which entities are considered constituent entities of the filer."[20] Given the practice of some U.S. businesses of sometimes assigning very similar names to related entities, the guidance should make clear that the parent filer must provide the complete legal name of each constituent entity. Providing complete legal names will help government personnel reviewing the forms to ensure that all entities are listed and identify any that may be missing.

Providing Identifying Numbers. The proposed rule states that parent entities filing CbC Reports must provide the taxpayer identification number (TIN) for themselves and each constituent entity in each relevant tax jurisdiction.[21] Currently, however, the proposed form does not indicate where or in what column that information should be provided. It could easily follow each constituent's name or a new column could be constructed to contain those numbers; the form merely needs to make it clear.

We also respectfully recommend that, in addition to mandating TINs, the final rule require each parent entity to provide a Legal Entity Identifier (LEI) for itself and each constituent entity, using the new international system for identifying individual business entities.[22] As you may be aware, the LEI system is a new system of unique global identifiers for corporations that that was conceived of by the G20 in response to the global financial crisis. The LEI system is run by a non-profit foundation, the Global LEI Foundation, which is responsible for administering the system, safeguarding its operational integrity, and ensuring that LEI information is available to all in an open data format. A group of over 70 regulators from around the globe also form a constituent body in the LEI system, the Regulatory Oversight Committee, which includes a representative from seven different U.S. agencies, including

[20] 80 Federal Register 246 (12/23/2015), at 79798.
[21] Id.
[22] For more information about LEIs, see http://www.leiroc.org/index.htm and https://financialresearch.gov/data/legal-entity-identifier/.

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Treasury.[23] As of October 2015, over 390,000 legal entities from 195 different countries had obtained LEI numbers.[24] Forty different jurisdictions have regulatory requirements that reference LEIs, and LEIs are currently required by the United States for entities engaging in reportable derivatives transactions.[25]

Acquiring an LEI is easy and inexpensive. Because LEIs provide a unique identifying number used worldwide and the system operates on a cost recovery basis (therefore imposing minimal cost to business and no cost to government), their use would simplify the compiling and analyzing of CbC reporting data for specific business entities, eliminating the need to find and navigate multiple TINs. They could also ease any confusion caused by similar entity names. Because LEIs offer a low-cost mechanism that enables more efficient tax, economic, and statistical investigation and analysis, it should become a mandatory element of the U.S. CbC Report, listed right after the TIN.

Requiring Reconciliations. Another important issue that requires strengthening involves proposed requirements for performing reconciliations. Currently, the proposed rule states that parent entities filing CbC Reports are not required to "reconcile the revenue, profit, and tax reported in the aggregate or with respect to a specific tax jurisdiction" on a CbC Report with the multinational's consolidated financial statements or tax returns.[26] But at another point, the proposed rule states that, although no reconciliation is required, the parent entity filing a CbC Report "must maintain records to support the information provided on" the report.[27] The proposed rule contains no further guidance as to the nature or extent of the supporting records that must be kept.

The proposed rule's two statements, taken together, invite misunderstanding. One possible interpretation could be that all a parent entity needs to do to support the information in its CbC Report is to keep a copy of its underlying financial statements and tax returns. Surely, a tax authority would need more than that if it has questions about the figures provided in a CbC Report. After all, CbC Reports will be filed only by massive multinational conglomerates with operations in multiple countries and hundreds of millions, if not billions, of dollars in complex financial transactions that may include substantial profit shifting. Vague references as to what documents should be retained to support questionable data in a CbC Report are a regulatory conflict waiting to happen.

A better approach would be to require each U.S. multinational to perform an internal reconciliation between its CbC Report and its financial statements and tax returns to support

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[23] Membership of the LEI Regulatory Oversight Committee is available at http://www.leiroc.org/about/membersandobservers/index.htm.
[24] Progress Report by the Legal Entity Identifier Regulatory Oversight Committee: The Global LEI System and regulatory uses of the LEI, Nov. 5, 2015, p. 6. Available at http://www.leiroc.org/publications/gls/lou_20151105-1.pdf.
[25] Id. at 12.
[26] 80 Federal Register 246 (12/23/2015), at 79799.
[27] Id. at 79800.

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the data provided to Treasury, and to keep a copy of that reconciliation for a specified period of time, but not submit it to any jurisdiction unless requested. Alternatively, at a minimum, the rule should require the parent entity to retain the work papers used to calculate the figures provided in its CbC Report and require the retention of those and any other documents needed to enable an auditor to reconstruct the basis for the reported information. Without a reconciliation or at least the related work papers, if a tax authority has questions about a particular CbC Report a year or two after it is prepared, the parent entity may have no institutional memory, documents, or audit trail to substantiate the report's figures. In that circumstance, it might cost the multinational and tax authority substantial funds to reconstruct what happened, incurring expenses that both could have avoided if this rule had required sufficient records to be maintained.

PART III: Legal Basis of the Rulemaking and Accessibility of Information

Country-by-Country Reports Should be Publicly Available Information. The proposed rule would make CbC Reports confidential to the IRS and, in time and under specific circumstances, tax authorities in foreign jurisdictions. We strongly recommend that CbC Reports be made publicly available either by the U.S. Government or by the reporting entities as a statutory requirement.

The proposed rule states that CbC Reports will include financial information on multinational corporate revenues, profits, income tax paid or accrued, capital, earnings, number of employees, value of tangible assets, jurisdictions of operation, and entities within the corporate group. None of this information amounts to trade secrets or is of paramount commercial sensitivity. As noted by Rosenblum and Maples in the publication *Contracts Confidential*:

> Perhaps the most widely made—and unchallenged—claim for confidentiality is that it protects *commercially sensitive information*. But this claim is only the beginning of an analysis, not the end. There is no technical definition of commercially sensitive information. Everything, from the existence of a contract, to illegal bribes, to most of what is disclosed under securities regulations, can be classified as "commercially sensitive" in the broadest sense of the term. However, disclosure of such information may still be required, in order to serve a greater public interest. In some cases it may be obvious; but in others, it may require tools to measure and balance the public interest in transparency against the private interest in confidentiality. The most important public interest at stake is the right to information, which enables democratic accountability.[28]

Given the massive amounts of money hemorrhaging from the U.S. economy due to profit shifting and the dire effects of profit shifting on the global economy and developing

[28] Rosenblum, P. and Maples, S. (2009). *Contracts Confidential: Ending Secret Deals in the Extractive Industries*, Revenue Watch Institute, New York, NY, p. 33, available at http://www.resourcegovernance.org/sites/default/files/RWI-Contracts-Confidential.pdf.

countries, as established in Part I of this comment letter, there is a substantial American and global public interest in ensuring that CbC Report information is available to as many different types of stakeholders as possible. That public interest far outweighs any perceived need to protect what some may proffer is commercially sensitive information contained in CbC Reports. It is precisely the lack of transparency that currently characterizes this information that has prevented lawmakers and other stakeholders from being able to see the development and effects of aggressive profit shifting activity over time and identify ways to address it.

The stakeholders to which we refer include, but are not limited to, (i) U.S. Members of Congress and other officials responsible for tax, development, economic, and other policy areas, (ii) their equivalents in other countries, (iii) the people they represent, (iv) investors, (v) academics, (vi) public interest groups, and (vii) journalists. We will take these in turn.

U.S. and Foreign Government Officials and the General Public. U.S. elected officials, officials appointed to or employed by agencies of the U.S. government, and their equivalent in other countries, have a responsibility to the people who elected them and who, in many countries, pay their salaries through their taxes, to fix the profit shifting problem. CbC reporting information must be publicly available to allow for the necessary unfettered access that all levels of government require in order to conduct the analyses needed to inform the creation of intelligent and effective legislative and policy solutions to the profit shifting problem. This is the direct application of the fundamental democratic concepts expressed by Blumenthal and Maples: transparency of CbC Report information serves the public interest by enabling the people to hold the government accountable for their actions (or failure to act) on this critical issue moving forward.

Investors. Investors also have a substantial interest the transparency of this information. Without publicly available CbC Reports, investors lack information that can influence their risk analysis. In July of 2015, the European Parliament adopted the following amendment to the existing Shareholder Rights Directive, which would require country-by-country reporting information to be publicly disclosed if the measure is approved in the final stages of the European legislative process:

> "2a. In the notes to the financial statements large undertakings and public-interest entities shall also disclose, specifying by Member State and by third country in which they have an establishment, the following information on a consolidated basis for the financial year:
> (a) name(s), nature of activities and geographical location;
> (b) turnover;
> (c) number of employees on a full time equivalent basis;
> (d) value of assets and annual cost of maintaining those assets;
> (e) sales and purchases;
> (f) profit or loss before tax;
> (g) tax on profit or loss;
> (h) public subsidies received;

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(i) parent companies shall provide a list of subsidiaries operating in each Member State or third country alongside the relevant data."[29]

Eurosif, the self-described "leading pan-European sustainable and responsible investment (SRI) membership organization"[30] has stated the following with respect to the investor use of publicly available country-by-country reporting:

> 1. Aggressive tax practices can undermine the sustainability strategies that companies have adopted and corporate commitments to economic development projects; 2. Short term financial gains from an aggressive tax positions may be offset by medium-to long-term repercussions related to reputational risks; and 3. Risks are derived from both actual tax practices and related lack of transparency. Failing to disclose one's tax position constitutes as much of a risk as the aggressive tax practices themselves.[31]

In addition, Dutch institutional investors' representative Eumedion stated in comments provided on the proposed revision to the European Shareholder Rights Directive, "Investors will benefit from increased public transparency on where taxes are paid ('country-by-country reporting') since it increases overall transparency and allows for a more detailed analysis by investors. It will also offer shareholders the opportunity to have a dialogue with the board of the company on this topic."[32]

Academics. Legislators and policy makers are subject to a wide array of competing demands and often have inadequate levels of staff to meet the demands of their policy portfolios. Many of the world's academics, however, are trained to analyze large data sets like the ones that CbC reporting will eventually create, and they have the ability to consider the changes in these data sets over time. We can only judge the efficacy of legislative and policy changes over time, and publicly available data will ensure that some of our brightest minds in academia are able to fully assess all the relevant variables to help determine whether actions that have been taken have been effective and, if not, to recommend alternatives.

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[29] Amendments adopted by the European Parliament on 8 July 2015 on the proposal for a directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement (COM(2014)0213 – C7-0147/2014 – 2014/0121(COD)), available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0257+0+DOC+XML+V0//EN.

[30] See http://www.eurosif.org/about/mission/.

[31] Eurosif, "Country-by-country Reporting: Eurosif's position," available at http://www.eurosif.org/wp-content/uploads/2015/07/2015-07-15_Eurosif-CBCR-Position-FINAL.pdf.

[32] Eumedion Corporate Governance Forum, "Comments on the Text Adopted by the Council and the Parliament on the Proposal for the Revision of the Shareholder Rights Directive," available at http://www.eumedion.nl/en/public/knowledgenetwork/position-papers/2016-01-srd---statement-triloog.pdf. See "Why Public Country-by-Country Reporting for Large Multinationals is a Must," available at http://financialtransparency.org/wp-content/uploads/2016/02/Joint_Civil_Society_QA_pCBCR.pdf.

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Journalists and Public Interest Organizations. Journalists, and non-profit public interest organizations are responsible for conducting many of the investigations and analysis that have brought this issue to the forefront of global policy making, and they could contribute vastly more to the effort to analyze CbC Reports and help develop policy options for tackling the problem if the information was made publicly available. Organizations like ActionAid brought the problem to the people through research reports like *Calling Time* and *Sweet Nothings,* reports that took entire teams of researchers more than a year to produce.[33] The International Consortium of Investigative Journalists has published exposé after exposé on multinational company tax dodging.[34] These are a very small number of examples of the awareness-raising work of journalists and public interest non-profit organizations around the world on this issue, demonstrating the global interest in and need for transparency to further identify the mechanisms driving and perpetuating global profit-shifting.

Public Country by Country Reporting Already Exists With No Detrimental Effects on Business. Pursuant to Article 89 of the EU Capital Requirements Directive IV[35], since 2013 many European banks and investment firms have been required to publicly report their profits/losses before tax, turnover, staff numbers, tax paid, and public subsidies received for each jurisdiction in which they have an establishment.[36] As was predicted in an economic study carried out by PricewaterhouseCoopers for the European Commission, the economic effects of such public disclosures have been so negligible as to be a complete non-issue.[37] This reporting rule has not made any of these banking institution reconsider their establishment in the EU, quite the contrary. In a recent public hearing, representatives of both the HSBC and Barclays banks have voiced their support for public CbC reporting.[38]

Economic Benefits of Public Country by Country Reporting. In its 17th Annual Global CEO Survey, PriceWaterhouseCoopers found that "almost six out of ten CEO's (59%) agreed that multinationals should be required to publish revenue, profit and tax disclosures on a country by country basis."[39] While the benefits to investors are clear, public CbC reporting is also much more cost effective for companies and government, which is likely another reason that so many CEOs support it. If companies were required to publish CbC Reports on their websites, for example, they would not have to incur costs related to provision of the

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[33] ActionAid's report *Calling Time* can be accessed at https://www.actionaid.org.uk/sites/default/files/doc_lib/calling_time_on_tax_avoidance.pdf and *Sweet Nothings* can be accessed at http://www.peuples-solidaires.org/sites/files/actionaid/sweet_nothings.pdf.
[34] See generally, http://www.icij.org/projects.
[35] European Union Directive 2013/36/EU.
[36] See http://europa.eu/rapid/press-release_IP-14-1229_en.htm.
[37] See PricewaterhouseCoopers (2014), *General assessment of potential economic consequences of country-by-country reporting under CrD IV*, available at http://www.pwc.com/gx/en/eu-institutions-services/pdf/pwc-cbcr-report-en.pdf.
[38] The European Parliament Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect - meeting 16/11/2015, available at http://www.europarl.europa.eu/news/en/news-room/20151110IPR01911/Special-Committee-on-Tax-Rulings-and-Other-Measures-Similar-in-Nature-or-Effect.
[39] PriceWaterhouseCoopers, *Focus on Tax: Building Trust and Growth, Related Summary to the 17th Annual Global CEO Survey, 2014*, at p. 17, available at http://www.pwc.com/gx/en/ceo-survey/2014/download.jhtml.

information to government(s) or responding to requests for this information or subsets thereof. The U.S. Government (and therefore taxpayers) would save the staff time and expense of establishing and operating the elaborate system that has been planned for exchanging this information between governments and policing its (unnecessary) confidentiality. Developing country governments, with far fewer resources to spend chasing information like that provided in CbC Reports, could freely access the information as needed when assessing the risk of profit shifting by a subsidiary of a multinational operating within their borders.

Creating a National Security Exception. The proposed rule states that "consideration has been given to the possible need for an exception to filing some or all of the information required on From XXXX, Country-by-Country Report, for national security reasons," and seeks input on the procedure that should be followed to demonstrate whether such an exception is warranted. Since creating such an exception is unnecessary and would require expensive, time-consuming procedures that would likely contribute little to national security, we recommend against proceeding with this proposal.

It is important to note in the first instance that none of the CbC Report information being collected should give rise to a national security risk if: (i) reported to the IRS on a confidential basis, (ii) provided to the tax authority of a foreign country that meets the required standards of confidentiality, or even (iii) if made publicly available as recommend in these comments. As stated above, CbC Reports include financial information on multinational corporate revenues, profits, income tax paid or accrued, capital, earnings, number of employees, and value of tangible assets. None of that information is national security-sensitive. As a result, we do not believe there is any justification for a national security exception. We have not seen any arguments in favor of such an exception, and it is not recommended or even contemplated in the OECD's CbC reporting standards.

Moreover, if the United States were to create such an exception, other countries are bound to follow, and multiple large multinationals deemed critical to the security of their home countries may be exempted from the CbC reporting obligation. Challenging the national security judgments of other countries would be extremely difficult. The United States should not initiate such a potentially disruptive set of exceptions to this important international effort.

If the decision is nevertheless made to create a national security exception, a careful process should be established to prevent abuses. Any national security exception should be granted only with the joint concurrence of the Secretaries of the Treasury, State, and Defense Departments, after review of a specific application requesting the exception by the parent entity otherwise obligated to file a CbC Report. Applications by existing multinationals could be required to be filed within 60 days after promulgation of the final rule, with final decisions on exceptions to be made within 60 days thereafter, with a possible extension for up to an additional 60 days. For entities formed after the effective date of the rule or for existing entities that meet the threshold reporting requirement for the first time after the rule's promulgation, they could be given 60 days from the end of the fiscal year in which they meet

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the threshold to apply for a national security exception, with a final decision on the applications to follow within 60 days, with a possible extension for up to an additional 60 days.

In reviewing an application, the Secretaries should consider such factors as the likelihood of harm to national security if the information were to become public, the importance of complying with the United States' international obligations, and any evidence that the entity may be engaging in profit shifting or other tax avoidance practices. The Secretaries should also consider whether any additional confidentiality restrictions, such as by classifying the CbC Report itself, would provide sufficient national security protection to allow the report to be filed. In any case where an application is denied, the entity should be required to file a CbC Report for the year in which the request was denied, as well as subsequent years. In cases where an application is approved, the exception should extend for only one year, with one-year renewals permitted if the parent entity files a renewal application explaining why the national security exception continues to be necessary.

Given that granting national security exceptions is a discretionary function and the criteria used to grant specific exceptions are unlikely to become public, the Secretaries should provide the Senate Committee on Finance, House Committee on Ways and Means, and the Senate and House Select Committees on Intelligence with an annual letter indicating the number of national security exceptions granted during the year, the general reasons for granting those exceptions, and the opportunity to obtain more detailed information upon request.

Treasury Reports, Not Returns. While we firmly believe that CbC reporting information should be publicly available information, should you choose not to adopt that democratically accountable, cost-effective position, we would ask you to at least reconsider the proposed legal basis for regulation. The proposed rule states that the CbC Report will be classified as "return information" under 26 U.S.C §6103.[40] However, the proposed rule describes the form as an "annual report" and states that the report's information would not be used as "conclusive evidence" regarding appropriate transfer pricing practices nor provide the sole basis for making transfer pricing adjustments.[41] That approach is consistent with the mutually-agreed upon OECD guidance on country-by-country reporting providing that tax authorities should not "propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the CbC Report."[42]

Rather than treating CbC Reports as return information, a better approach would be to treat CbC reports in the same manner as Financial Bank Account Reports (FBARs). FBARs are filed by U.S. persons with the Treasury Department, rather than the IRS, and are not treated as return information. This approach allows not only the IRS, but also Treasury officials and other

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[40] 80 Federal Register 246 (12/23/2015), at 79796.
[41] Id.
[42] *Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, OECD (2015), at 5.

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federal law enforcement personnel to review the report information outside the confines of §6103. At the same time, while not deemed return information subject to §6103, FBARs have remained confidential documents. CbC Reports could be handled in the same manner. To enable CbC Reports to be treated in the same manner as FBARs, the final rule could cite the Treasury Secretary's authority in §§321(b)(1), 5311, 5314, and 5318(a)(3) of Title 31 of the U.S. Code.

Handling CbC Reports as non-tax Treasury filings would make it possible for the country-by-country data to be accessed by senior policymakers other than IRS agents, such as Treasury officials, and Members of Congress as they work to develop tax policy and, in some cases, vote on tax legislation at the federal and state levels. Surely Members of Congress, at a minimum, should be able to review information about the economic presence of large U.S. multinationals in specific countries. The same data would likely also be invaluable to policymakers in other areas. The data could, for example, inform lawmakers and regulators at the state and federal levels working on such issues as global trade, monetary policy, economic development, foreign aid, financial market regulation, commodity and currency trading, corruption, and money laundering, to name a few important non-tax issue areas. Leveraging relevant data to inform decision-making in important policy areas is the hallmark of an efficient and effective government. This is a prime opportunity to leverage important, heretofore unavailable data to inform better decision-making in government agencies other than the IRS.

Under 26 U.S.C. §6103(f), "return information" is available to Members of Congress only in very limited circumstances and generally upon request by the Chair of a small number of specific committees. That limitation makes access to the information subject to political whim and machinations as opposed to being data that can be analyzed by all Members of Congress with an interest in solving the problem of the erosion of the U.S. tax base as a result of profit shifting—a problem that directly affects every constituent of every Member of Congress. None of this can happen, however, if CbC Reports are classified as "return information" under 26 U.S.C. §6103.

The statute similarly provides for very limited and specific access to the information by other organs of government. For example, the Department of Justice may only access the information solely for use in a proceeding already before a grand jury, and only if certain other requirements are also met.[43] Give that CbC Reports are intended to be used for risk assessment, this limitation on access to the Reports is not fit for purpose.

Informing the Public. If the final rule continues to categorize CbC Reports as "return information", we respectfully recommend that the final rule include provision pursuant to 26 U.S.C. §6103(j) that would require statistical reporting to the public. Today, no one in the United States has reliable country-by-country information about large U.S. multinationals in terms of where they operate, how many employees they have, the size of their capital

[43] See 26 U.S.C. §6103(h)(2).

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investments, the amount of their profits or losses, or the taxes they pay. The information to be collected in the CbC Reports will, for the first time, provide accurate, timely economic, business, and tax information that could play an invaluable role in designing effective and efficient U.S. policy.

Earlier in this letter, we urged that the forms not be treated as tax return information, so that the data would not become subject to the legal barriers erected by §6103. If the decision is nevertheless made to treat the forms as tax return information, we ask that the final rule at least mandate issuance of an annual public summary of the country-by-country information in aggregate form.

That annual public summary could take many forms. At the very least it should provide general aggregate information such as the total number of multinationals that filed the form and, for each country with at least three U.S. multinationals, the total number of U.S. multinationals operating there, the total number of employees, and the total amount of revenues, profits or losses, capital investments, and taxes paid or accrued by U.S. multinationals in that jurisdiction. Treasury and the IRS already provide or allow others to analyze and publish summaries of many types of tax return data[44], including data in the Schedules M filed by large U.S. corporations; CbC Reports should be no exception. Even this minimal information would provide the first accurate, timely data of its type and would be of interest to policymakers, academics, and the public.

We recommend that the public summary go further, however. First, it should include a list by name of the multinationals that filed CbC Reports. Such a list would enable policymakers, academics, and the public to learn what U.S. multinationals that meet the reporting threshold (if adopted as proposed, those that have at least $850 million in revenues) – information which is already partially disclosed through filings by publicly traded corporations, which is of public significance, and which has no policy basis for concealment from policymakers, taxpayers, or others. Disclosing the list of filers may also enable third parties to identify any multinationals that should have filed CbC Reports, but did not.

In addition to naming the CbC Report filers, the public summary could provide basic aggregated information for each multinational group. That aggregated information could include, for example, the total number of constituent entities included in each multinational group, the total number and names of the countries where it has an economic presence, and the total number of employees reported for each jurisdiction. None of those facts involves tax information, and there is no reason to keep any of those facts from policymakers, academics, or the public. In addition, for each multinational, the public summary could provide a range of profits or losses, capital investments, and taxes paid or accrued in each country. Again, this information would not only benefit policymakers, academics, and the public, but also enable third parties, including other countries, to double check the accuracy of the figures provided.

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[44] See https://www.irs.gov/uac/Tax-Stats-2.

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PART IV: International Engagement

Exchanging Information. Another important issue involves the manner in which the United States intends to exchange CbC information with other countries. The explanatory text preceding the statutory text of the proposed rule contains language that indicates an intention to limit the permissible uses of exchanged CbC data even beyond the constraints contained in existing information exchange agreements. It states:

> [U]nder the terms of information exchange agreements, neither tax jurisdiction is permitted to disclose the information received under the information exchange agreement or use such information for any non-tax purpose. Under the contemplated competent authority arrangements for the exchange of CbC reports, the competent authorities of the United States and other tax jurisdictions intend to further limit the permissible uses of exchanged CbC reports to assessing high-level transfer pricing and other tax risks and, where appropriate, for economic and statistical analysis.[45]

The proposed rule offers no justification for limiting the exchange of CbC data beyond what is already provided for in current U.S. information exchange agreements. Even the limitation imposed by existing information exchange agreements, namely a prohibition on the disclosure of information for any non-tax purpose, is too restrictive. That is why we recommend that, rather than utilize its bilateral tax information exchange agreements, the United States exchange CbC information using the international agreement established for that purpose.

While we reiterate our call for CbC reporting information to be made publicly available, rendering this entire issue moot, should that not be the course chosen we would like to echo comments on this issue that have been submitted to you by the BEPS Monitoring Group.[46] We adopt and endorse those comments in full, which we reprint here:

> "On January 27, 2016, thirty-one countries signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (MCAA). Presumably many more will sign in the months ahead.
>
> "It has been reported that the U.S. will not sign the MCAA, but will rather enter into 'bilateral agreements with appropriate countries that have also adopted country-by-country reporting provisions, have appropriate safeguards and infrastructure in place, and with respect to which the U.S. has an income tax treaty or tax information exchange agreement in effect.'

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[45] 80 Federal Register 246 (12/23/2015), at 79796.
[46] Comment letter submitted by the BEPS Monitoring Group (undated).

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"Part 2 of the Background section beginning on page 5 of the notice of proposed rulemaking discusses extensively the Treasury and IRS concerns regarding U.S. confidentiality requirements. Presumably because of these concerns, the notice states:

> It is expected that the U.S. competent authority will enter into competent authority arrangements for the automatic exchange of CbC reports under the authority of information exchange agreements to which the United States is a party.

"While the U.S. network of tax treaties and information exchange agreements is by no means small, this network excludes some number of developing countries, many of which are honorable in their respect for confidentiality and protection of taxpayer information, but which are most in need of CbC information so that they can intelligently direct their limited resources in identifying and combatting MNE BEPS behavior.

"This planned approach by the U.S. to require a separately agreed tax treaty or information exchange agreement before there can be any CbC exchange means that not only will initiation of such exchanges be seriously delayed for many countries, but probably will never occur for many others. The reality is that there are limited numbers of U.S. officials who negotiate such agreements. It is likely to be years before Treasury's limited resources will be able to negotiate agreements with numerous countries and, in addition, perform the due diligence functions set out in the notice of proposed rulemaking. From pages 5 – 6:

> Prior to entering into an information exchange agreement with another tax jurisdiction, the Treasury Department and the IRS closely review the tax jurisdiction's legal framework for maintaining confidentiality of taxpayer information and its track record of complying with that legal framework. In order to conclude an information exchange agreement with another tax jurisdiction, the Treasury Department and the IRS must be satisfied that the tax jurisdiction has the necessary legal safeguards in place to protect exchanged information, such protections are enforced, and adequate penalties apply to any breach of that confidentiality. Moreover, even when these conditions have been met and an information exchange agreement is in effect, the U.S. competent authority will not enter into a reciprocal automatic exchange of information relationship with a tax jurisdiction unless it has reviewed the tax jurisdiction's policies and procedures regarding confidentiality protections and has determined that such an exchange relationship is appropriate.

"There are two ways to proceed. One way is to do as now planned and have separately negotiated bilateral agreements with perhaps as many as 200 tax

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jurisdictions. The other way is to be a signatory to the MCAA, and then to conduct applicable due diligence to determine with which of the other jurisdictions it is possible to allow actual CbCR exchanges.

"Taking this other way would significantly reduce the efforts required by Treasury's limited personnel resources. In addition, though, and very importantly, it would demonstrate global leadership in tax administration that would favorably influence many other countries to do the same. Without question, better CbCR will pay significant dividends to the United States through increase collection of taxes from foreign-based MNCs.

"If the presently planned separately negotiated bilateral agreements approach is continued, we are very concerned that the delays we fear will come true, as will significant gaps due to there being no bilateral agreements executed with many countries. Such a situation will severely hurt both the United States' efforts to implement its own tax laws and the efforts of many other countries, both developed and developing. It will likely also encourage numerous countries to bypass the government-to-government exchange procedures and simply require MNEs to file their CbC reports directly with the local country tax administrations."

Like the BEPS Monitoring Group, we view the United States' current plan to exchange CbC information through its network of bilateral tax agreements instead of through the multilateral exchange agreement developed for that purpose as ill-advised, due to the additional cost, delays, and information restrictions involved, the potential negative impact on developing country access to the information, as well as the negative impacts on the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports. We urge the United States to respect rather than disregard the existing international process for sharing CbC information if the decision is taken that CbC reporting should not be publicly available information.

Thank you for this opportunity to comment on the proposed rule. Please contact FACT Steering Team Member Heather Lowe at Global Financial Integrity (hlowe@gfintegrity.org) and FACT Member Elise Bean (elisejbean@gmail.com) with any questions.

Sincerely,

Clark Gascoigne
Acting Executive Director
FACT Coalition