May 13, 2016

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

On behalf of Oxfam America, I would like to thank the U.S. Treasury Department and Internal Revenue Service for the opportunity to express our strong support to United States' global commitment to require country-by-country reporting by U.S. multinationals and present our comments to the proposed rule.

My name is Tatu Ilunga and I am the Senior Policy Advisor on Tax Issues at Oxfam America. Prior to joining Oxfam America, I was previously with the international practices of Ernst and Young and KPMG, in Luxembourg, and more recently with the World Bank, in Washington D.C.

Along with our FACT coalition partners, Oxfam America seeks an honest and fair international tax system, greater transparency in corporate tax payments and ownership, and policies that contribute to reduce inequality that are undermining our social fabric and hindering economic growth.

I'd like to begin my statement by making a reference to Kimberly Clausing, Professor of Economics at the Reed College in Portland, who estimated in her paper on *"The Effect of Profit Shifting on the Corporate Tax Base in the United States and Beyond"*, that profit shifting by multinational corporations is likely to cost the U.S. government approximately one hundred and eleven billion dollars in corporate tax revenue each year.

Also, it is estimated that similar practices from multinational companies lead to a loss of one hundred billion dollars every year for developing countries. Profit-shifting by multinationals 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. The harm done to Americans and people living in poor countries by these corporate tax practices are inevitably two sides of the same coin.

Oxfam strongly supports the need for CbC Reporting for multinational corporations, as it will bring more transparency and to make this new rule more effective, we would like to offer our comments on the following: (1) the need for CbC Reports to be publicly available; (2) the 50% threshold required for constituent entities to be included in CbC Reporting; and (3) the importance of sharing CbC information through the multilateral exchange agreement created for that purpose.

I. 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 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. The proposed rule does not require these companies to make this information public, therefore hampering real accountability. It 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.

Given the massive amounts of loss of revenues for both the U.S. and developing countries , 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. Furthermore, we believe that making that information public could serve as a deterrent for multinationals to use aggressive tax planning, as this info would be available amongst other stakeholders, including: (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.

II. Under the proposed rule, a U.S. parent entity may exclude from its CbC Reports any information related to a constituent entity in which it has a 50% or less ownership interest, even if it includes income from that entity in its financial statements. It is unclear to us 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 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.

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. 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.

III. 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.

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 bilateral tax information exchange agreements, the United States exchange CbC information using the international agreement established for that purpose.

We understand 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.

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

We believe that 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 come with additional cost, delays, and information restrictions that will have potential negative impacts on developing country access to the information. We therefore urge the United States to respect rather than disregard the existing international process for sharing CbC information.

Again, thank you for the opportunity to testify today.

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