September 30, 2016

Technical Director
File Reference No. 2016-270
FASB, 401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 2016-270: Comments on the Exposure Draft for the Proposed Accounting Standards Update to Income Taxes (Topic 740)

Dear Director Cosper,

We applaud the Financial Accounting Standards Board (FASB) and your work in recent months to review and improve the standards for income tax disclosure by companies. In a world where U.S. multinational businesses have pursued increasing sources of profits, supply, and capital across multiples jurisdictions, we are especially encouraged by and support the proposals to expand transparency regarding foreign taxes and earnings. We believe, however, that the improved disclosure requirements in the exposure draft do not go far enough and would leave out critical information needed by investors and other important constituencies. We urge you to require companies to provide a complete picture of their offshore operations by requiring full disclosure of key financial, tax, and operational data on a country-by-country basis.

In recent years, the scale of offshore tax avoidance by U.S. multinational corporations has grown enormously. U.S. companies are currently holding more than $2.4 trillion "offshore" in order to avoid paying taxes they would owe upon repatriation of this income to the United States.[1] In total, Professor Kimberley Clausing estimates that companies are using a variety of profit-shifting strategies to avoid more than $100 billion in U.S. taxes each year.[2]

In addition to the impact on U.S. taxpayers and citizens, there is broad understanding that corporate tax avoidance is impeding development and economic growth in developing countries. Lost corporate tax revenue in low-income countries means fewer resources to build schools, hospitals, or infrastructure—and pushes those countries to rely heavily on loans to fund basic services.

Fiscal pressures and public outrage across the world over corporate tax avoidance have pushed governments to begin taking action to crack down on this behavior. Most notably, the Organisation for Economic Co-operation and Development (OECD) has led an effort, known as the BEPS (Base Erosion and Profit Shifting) Project, to prevent the artificial shifting of profits to low or zero tax jurisdictions.[3] Related efforts are already making a major impact, with the

European Commission recently ruling that Apple owes $14.5 billion in back taxes on over $115 billion in income on which it had paid virtually nothing in taxes.[4]

In the United States, lawmakers from both sides of the aisle have proposed enacting a significant reform of international taxes that would at a minimum impose some level of immediate taxation on the outstanding offshore profits.[5] Even without legislative action, the U.S. Treasury Department has increasingly used its administrative authority to issue new rules cracking down on international tax avoidance behavior.[6]

Unfortunately, current income tax disclosure rules do not provide enough detail to allow investors or the public to evaluate the extent to which companies may be engaged in artificial profit-shifting behaviors and, therefore, the potential downside risk individual companies may face from a crackdown on offshore tax avoidance. The potential cost some companies could face is substantial. For example, a report by the financial services company Credit Suisse found that numerous major companies could face off-balance-sheet tax liabilities constituting 10 percent or more of their total market capitalization if they end up having to pay a 25 percent tax rate on their offshore earnings.[7]

The most comprehensive and cost effective way to provide the needed clarity on U.S. companies' international operations would be to require them to publicly disclose the same country-by-country financial data that many companies will already be required to report to the Internal Revenue Service (IRS) as per recently issued rules by the Treasury Department.[8] In other words, companies should be required to publicly disclose their revenue, profit before income tax, total income tax paid on a cash basis, total accrued income tax expense, total employees, book value of tangible assets, and additional important financial data already required by the IRS, on a country-by-country basis.

While representatives of some companies have objected to the difficulty and cost of providing the relatively low level of disclosure in many of the proposals considered by FASB, requiring companies to publicly disclose the information they are already required to disclose to the IRS means that such disclosure would come at little to no additional cost. At the same time, making this information public will provide investors and the public with information necessary to make informed decisions about individual companies' potential financial exposure due to their tax avoidance. In addition, this level of disclosure would provide lawmakers with a significantly greater amount of information from which to better, and perhaps more narrowly, tailor international tax reform proposals.

Barring complete country-by-country reporting, at a minimum, FASB is right to require companies to disaggregate their foreign income tax paid for significant countries as is done in the proposal, but remiss in not requiring companies to disaggregate income earned before taxes for significant countries or their subsequent tax rate. This information is crucial in allowing investors and the public to assess the level of tax that a company is paying in a given country and thus their potential risk in facing higher future taxes.

In addition, based upon the presumption that earnings generated by a foreign subsidiary will ultimately be distributed to the U.S. parent company, at a minimum, FASB should require all companies to provide a reasonable estimate of how much they would owe in taxes if they repatriated their offshore permanently reinvested earnings (PRE), thus removing the current "practicability" standard that allows an unacceptable 80 percent of Fortune 500 companies with PRE to escape disclosure.[9] Given the wide variance of taxes owed on PRE, even requiring a rough or range of estimates of their potential taxes would be better than the current standard of allowing the vast majority of companies to disclose nothing at all. Given the high risk that PRE will be taxed and PRE's central role in potential corporate tax reform legislation, this information is essential for investors and the public alike, even if it has some modest cost to calculate.

Thank you for your consideration and your continual efforts to improve accounting standards so that users of financial statements have the information they need to make important economic decisions. To this end, we hope you use this review process to embrace the growing international consensus in favor of requiring companies to publicly disclose key operational data on a country-by-country basis.

Sincerely,

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Center of Concern

Citizens for Tax Justice

Coalition on Human Needs

Economic Policy Institute

European Network on Debt and Development (Eurodad)

Fair Share

Financial Accountability & Corporate Transparency Coalition (FACT Coalition)

Global Financial Integrity

Global Witness

Jubilee East Bay

Jubilee USA Network

Kairos Europe

Main Street Alliance

Methodist Tax Justice Network

NETWORK Lobby for Catholic Social Justice

New Rules for Global Finance

Oxfam America

Patriotic Millionaires

Public Citizen

Publish What You Pay US

Tax Justice Network

Tax Justice Network – Norway

Tax Justice Network – USA

Tax Research UK

U.S. Public Interest Research Group (PIRG)

Vienna Institute for International Dialogue and Cooperation (VIDC)

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[1] Citizens for Tax Justice, "Fortune 500 Companies Hold a Record $2.4 Trillion Offshore," March 4, 2016. http://ctj.org/ctjreports/2016/03/fortune_500_companies_hold_a_record_24_trillion_offshore.php

[2] Kimberly A. Clausing, "Profit shifting and U.S. Corporate Tax Policy Reform," Washington Center for Equitable Growth, May 2016. http://equitablegrowth.org/report/profit-shifting-and-u-s-corporate-tax-policy-reform/

[3] Organisation for Economic Co-operation and Development, "About BEPS and the inclusive framework," http://www.oecd.org/ctp/beps-about.htm

[4] European Commission, "State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion," August 30, 2016. http://europa.eu/rapid/press-release_IP-16-2923_en.htm

[5] Jonathan Weisman, "Plan to Curb U.S. Taxation of Overseas Profit Finds Bipartisan Support," New York Times. July 8, 2015. http://www.nytimes.com/2015/07/09/business/end-to-us-taxation-of-overseas-profit-finds-bipartisan-support.html

[6] U.S. Treasury, "Fact Sheet: Treasury Issues Inversion Regulations and Proposed Earnings Stripping Regulations," April 4, 2016. https://www.treasury.gov/press-center/press-releases/Pages/jl0404.aspx

[7] Credit Suisse, "Parking A-Lot Overseas: At Least $690 Billion in Cash and Over $2 Trillion in Earnings," March 17, 2015. https://doc.research-and-analytics.csfb.com/docView?language=ENG&format=PDF&source_id=em&document_id=1045617491&serialid=jHde13PmaivwZHRANjglDIKxoEiA4WVARdLQREk1A7g%3D

[8] Internal Revenue Service, "Country-by-Country Reporting," June 30, 2016. https://www.federalregister.gov/articles/2016/06/30/2016-15482/country-by-country-reporting

[9] Citizens for Tax Justice, "Fortune 500 Companies Hold a Record $2.4 Trillion Offshore," March 4, 2016. http://ctj.org/ctjreports/2016/03/fortune_500_companies_hold_a_record_24_trillion_offshore.php