FACTCOALITION
Financial Accountability & Corporate Transparency

May 25, 2017

Roberto Gualtieri, Chair of the Committee on Economic and Monetary Affairs
Pavel Svoboda, Chair of the Committee on Legal Affairs
Hugues Bayet, Member of the European Parliament
Evelyn Regner, Member of the European Parliament

Re: Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (COM(2016)0198 – C8-0146/2016 – 2016/0107(COD))

Dear M. Gualtieri, M. Svoboda, M. Bayet and Ms. Regner:

On behalf of the Financial Accountability and Corporate Transparency (FACT) coalition, a U.S. based organization, we write to urge you to adopt meaningful and public country-by-country reporting as proposed in your committees' joint draft report.[1]

The FACT coalition is a U.S. non-partisan alliance of more than 100 state, national, and international organizations 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.[2]

Americans have a stake in the European debate on country-by-country reporting as both taxpayers and investors.

When U.S. multinational companies avoid paying taxes, individual taxpayers and small businesses must cover the costs or lose public services. Profit shifting costs the American taxpayer an estimated €120 billion a year.[3] Because of the US policy of deferral, U.S. companies have accumulated an estimated €2.3 trillion offshore, on which they owe an estimated €686 billion in taxes.[4] IRS data show that much of those offshore profits sit in European Union member-states.[5]

The European Union and its member-states have stepped up their enforcement of current laws and passed new laws to rein in tax avoidance, a welcomed initiative. As a result, U.S. investors have been hit with unexpected tax liabilities. For example, the European Commission ruled Apple owes €12.5 billion in back taxes plus interest.[6] Starbucks and Fiat Chrysler similarly received state aid illegal under E.U. law,[7] and Amazon and McDonald's are under investigation.[8] The Paris offices of Google were raided last year by French tax authorities.[9] A number of companies have warned that tax enforcement is likely to decrease earnings,[10] and Goldman Sachs has advised investors to focus on companies that pay high effective tax rates to minimize exposure to offshore tax liabilities.[11] It is increasingly clear that planned transparency is safer and less disruptive than future leaks or investigations that lead to reputational damage.

Profit shifting and aggressive tax avoidance are now significant considerations when developing tax policy. Austerity decisions in the U.S. are driven by multiple factors but one significant consideration is the decrease in corporate taxes collected as a percentage of GDP, corporate profits, and overall tax revenues, all at a time of record corporate profits. Given that tax policy remains a competence of member-states, citizens and parliamentarians ought to know which multinational companies operate in their national territories and how much tax they pay to their states.

Multinational companies have raised the concern of the compliance costs of increased disclosure. However, some companies are already required to file country-by-country reports as a result of the multilateral Base Erosion and Profit Shifting (BEPS) and would face minimal additional cost.

European multinational companies also worry about the competitive disadvantage of being subject to a greater level of disclosure than their non-E.U. competitors. However, the proposed public country-by-country reporting amendment would apply to companies of any nationality that operate in the European Union. Starting with the BEPS process, country-by-country reporting has become an international norm. Legislation for public reporting has been introduced in the US Congress[1][2] and certain regulatory authorities are considering these changes for publicly available financial statements. This shift to transparency is long overdue. Companies have always had the information. Tax authorities now have the information. It is difficult to argue that investors who put money at risk should not also have access to the information.

The Panama Papers, Luxleaks and other scandals have shaken public confidence in the integrity and fairness of the tax system. Confidence will not be restored as long as country-by-country reports are not made public.

We thank you for your consideration of our comments. If you have any questions or would like additional information, please contact me at gkalman@thefactcoalition.org.

Sincerely,

Gary Kalman, Executive Director
Financial Accountability and Corporate Transparency (FACT) Coalition

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[1] European Parliament (2017) "Draft Report on the proposal for a directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches" http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-597.646&format=PDF&language=EN&secondRef=02

[2] For a full list of FACT members, see: https://thefactcoalition.org/about/coalition-members-and-supporters/

[3] Clausing, Kimberly A. (May 10, 2016) "Profit Shifting and US Corporate Tax Policy Reform", Washington Center for Economic Growth http://equitablegrowth.org/report/profit-shifting-and-u-s-corporate-tax-policy-reform/

[4] Institute on Taxation and Economic Policy (March 28, 2017) "Fortune 500 Companies Hold a Record $2.6 Trillion Offshore" https://itep.org/fortune-500-companies-hold-a-record-26-trillion-offshore/

[5] Citizens for Tax Justice (May 27, 2014) "American Corporations Tell IRS the Majority of Their Offshore Profits Are in 12 Tax Havens"
http://ctj.org/ctjreports/2014/05/american_corporations_tell_irs_the_majority_of_their_offshore_profits_are_in_12_tax_havens.php?&_ga=1.241752010.971424169.1397568379#.WSML-Ovytpi

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

[7] European Commission (October 21, 2015) "Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules" http://europa.eu/rapid/press-release_IP-15-5880_en.htm

[8] European Commission (December 3, 2015) "State aid: Commission opens formal investigation into Luxembourg's tax treatment of McDonald's" http://europa.eu/rapid/press-release_IP-15-6221_en.htm
European Commission (October 7, 2014) "State aid: Commission investigates transfer pricing arrangements on corporate taxation of Amazon in Luxembourg" http://europa.eu/rapid/press-release_IP-14-1105_en.htm

[9] Reuters (May 24, 2016) "Investigators raid Google Paris HQ in tax evasion inquiry"

[10] Financial Times (March 28, 2016) "US companies warn tax avoidance crackdown will hit earnings" https://www.ft.com/content/b6f04f72-f12c-11e5-aff5-19b4e253664a

[11] Politico (May 23, 2016) "Goldman on how to invest in 2016" http://www.politico.com/tipsheets/morning-money/2016/05/goldman-on-how-to-invest-2016-214424

[12] Stop Tax Havens Abuse Act: https://www.congress.gov/bill/115th-congress/house-bill/1932
Tax Fairness and Transparency Act: https://www.congress.gov/bill/115th-congress/house-bill/2057