FACTCOALITION
Financial Accountability & Corporate Transparency

May 3, 2018

Ms. Susan M. Cosper
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 are writing on behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition to urge the Financial Accounting Standards Board (FASB) 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. Such country-by-country reporting would provide critical, necessary information for investors and for tax officials.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations in the U.S. 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.[1]

There is a need to re-evaluate any tax-related rules in the aftermath of the new tax legislation. In the case of rules for reporting income tax disclosures, that re-evaluation must take into account the increased risks of tax avoidance by multinational companies and the increased need for public country-by-country reporting standards under the Tax Cuts and Jobs Act to aid investors, policy-makers, and others.

The passage of the Tax Cuts and Jobs Act makes it is even more important that FASB establish strong rules for companies to disclose their foreign taxes and earnings, including full disclosures of key financial, tax, and operational data on a country-by-country basis. By applying a higher tax rate to domestic profits than to foreign profits, the hybrid "territorial" tax system further incentivizes profit-shifting, a practice that undermines the needs of U.S. citizens and taxpayers, investors across the globe, and developing countries.[2]

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[1] A list of FACT members is available at http://thefactcoalition.org/about/coalition-members-and-supporters/.

[2] Alexandra Thorton and Seth Hanlon, "A Territorial Corporate Tax Would Reward Corporate Tax Avoidance and Could Encourage Offshoring," Center for American Progress. September 22, 2017.

Before the passage of the tax legislation in December 2017, corporations with offshore profits could defer paying taxes on those profits indefinitely, until the money was repatriated to a U.S. parent company. U.S. companies were holding more than $2.6 trillion[3] "offshore" under this system in order to avoid paying taxes they would owe upon repatriation of this income to the United States. In total, Professor Kimberly Clausing estimated that companies were using a variety of profit-shifting strategies to avoid more than $100 billion in U.S. taxes each year.[4]

Supporters of the hybrid territorial tax system created under the Tax Cuts and Jobs Act claim it will spur companies to invest and produce more in the United States, while critics assert that by taxing only U.S. profits and exempting foreign profits it drastically increases the incentive for corporations to book and move profits to offshore tax havens. The Joint Committee on Taxation estimates that the cost of the shift to a territorial tax system will be $223.6 billion over the next decade.[5] Overall, the Joint Committee on Taxation estimates that, excluding one-time revenue, the international provisions of the Tax Cuts and Jobs Act will lose $14 billion over the next decade.[6]

Actual data to test this policy dispute and to evaluate the cost estimates is critical, not only to policy-makers, but also to members of the public and investors evaluating the new tax regime and resulting business climate. But under the new system, multinational companies will disclose less information; provide less data by which to assess U.S. investment, foreign profit-shifting and aggressive tax avoidance; and enjoy greater opportunities to mischaracterize where profits are earned, understate potential tax liabilities, and distort the debate over the costs and benefits of the Tax Cuts and Jobs Act.

Previously, companies were required to disclose their total unrepatriated profits and, in some cases, how much they owe in taxes on those profits. This information provided analysts with a rough indicator of the scale and nature of companies' offshore tax strategies, but this data will no longer be reported by most companies since the new tax law requires annual tax payments and essentially eliminates deferral. The absence of data on unrepatriated profits will make it even more difficult for public and private researchers to determine the extent to which companies may be moving profits out of the United States and engaging in offshore tax avoidance.

The combination of the new tax law and reduced reporting data leaves investors and policy-makers unable to effectively assess the impacts of the law's provisions and the extent of profit-shifting and aggressive tax avoidance, leaving them without the information needed to weigh risks and accurately analyze the impacts of the Tax Cuts and Jobs Act on our economy.

It also leaves policy-makers and the public unable to gauge whether the Tax Cuts and Jobs Act does enough to mitigate the inevitable gamesmanship and hidden abuses of the new system. While several

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https://www.americanprogress.org/issues/economy/reports/2017/09/22/439235/territorial-corporate-tax-reward-corporate-tax-avoidance-encourage-offshoring/

[3] U.S. PIRG and Institute on Taxation and Economic Policy, "Offshore Shell Games 2017," October 17, 2017. https://itep.org/offshoreshellgames2017/

[4] 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/

[5] Joint Committee on Taxation, "Estimated Budget Effects Of The Conference Agreement For H.R.1, The "Tax Cuts And Jobs Act", December 2017. https://www.jct.gov/publications.html?func=startdown&id=5053

[6] Ibid.

measures aimed at minimizing base erosion are included in the legislation, these measures may prove ineffective without public country-by-country reporting to identify gaps and misreporting. Other countries that have enacted a territorial tax system, like those in the European Union, are moving toward public country-by-country reporting standards in order to better equip themselves to cope with tax avoidance strategies.[7]

A number of EU countries, as well as the European Union as a whole, have initiated a crackdown on multinational corporations that earn substantial revenues within their jurisdictions but pay little or no tax.[8] As a result, U.S. multinational corporations are facing increased enforcement actions and an increased risk of fines and penalties. Investors need country-by-country reporting to be able to identify and evaluate those risks.

Country-by-country accounting standards set by FASB could ensure that the public and investors are protected from risky tax strategies. We urge you to continue to pursue robust new rules for income tax disclosures by companies, specifically 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.

With the new challenges presented by the recent, dramatic changes to the tax code, it is vital to collect detailed information about companies' tax and financial activities around the globe so that investors, policy-makers, civil society organizations, and the corporate community have the data they need to make informed analyses.

For questions or additional information, please contact Clark Gascoigne at cgascoigne@thefactcoalition.org.

Sincerely,

Gary Kalman
Executive Director
The FACT Coalition

Clark Gascoigne
Deputy Director
The FACT Coalition

[7] EY, "European Parliament votes in favor of public Country-by-Country reporting in first reading," July 7, 2017. http://www.ey.com/gl/en/services/tax/international-tax/alert--european-parliament-votes-in-favor-of-public-country-by-country-reporting-in-first-reading

[8] European Commission, "Digital Taxation: Commission proposes new measures to ensure that all companies pay fair tax in the EU," March 21, 2018. http://europa.eu/rapid/press-release_IP-18-2041_en.htm; Abha Bhattarai, "Amazon ordered to pay nearly $300 million in back taxes," Washington Post, October 4, 2017. https://www.washingtonpost.com/news/business/wp/2017/10/04/amazon-ordered-to-pay-nearly-300-million-in-back-taxes/; Reuters, "France says Europe should make U.S. companies pay fair share of taxes," JULY 9, 2017. https://www.reuters.com/article/us-france-taxes-idUSKBN19U0F8