FACTCOALITION
Financial Accountability & Corporate Transparency

March 15, 2019

Judy Kuszewski
Chair, Global Sustainability Standards Board
c/o Global Reporting Initiative
Barbara Strozzilaan 336
1083 HN Amsterdam
The Netherlands

RE: Exposure Draft of GRI Topic-Specific Standard: Tax and Payments to Governments

Dear Chair Kuszewski,

We write to offer our support on behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition for the Exposure Draft of GRI topic-specific Standard for Tax and Payments to Governments. Stakeholders – investors, public officials, workers and others – need to understand how corporations approach tax and payments to government to assess risk and plan for community needs.

The proposed reforms would help these efforts and substantially aid progress toward the United Nations Sustainable Developments Goals.

The FACT Coalition is a 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.

Importance of Tax Strategies and Governance: We support the call for greater transparency around tax planning.

The proposed standard for disclosure of business tax strategies is reasonable. It is clear and understandable. The information is well known to management and should not create a substantial burden. The specificity of required information is critically important to avoid the problems with the existing disclosure regime. To a limited degree, certain tax risks are disclosed or otherwise reflected in the financial statements of a U.S. Securities and Exchange Commission (SEC) reporting entity. However, these disclosures reveal little about the company's approach towards tax planning, and limited information on potential risks created by the tax strategies company's employ. Insight into both tax strategy and governance around tax planning is essential for stakeholders. These constituencies need to understand the corporate approach and the policies that drive the decision making and confirmation that senior management is fully engaged in the decision-making process.

We also support the call for disclosure of how tax strategies link to business strategies. In 2018, General Electric (GE) downplayed the potential for a $US 1 billion tax bill to Britain. After many years of aggressive tax planning, British tax authorities are looking closer at how GE interpreted its tax liabilities. In an email to investors last November, GE wrote, "Based on current law and guidance, we believe our current accrual is a reasonable estimate for the enactment of tax reform." Laws and interpretations of laws are changing at a rapid rate and this assurance came on the heels of an announcement by GE experienced a $US 22 billion quarterly loss. It was followed by an unprecedented cut in their dividend payment to investors – only the second time GE cut its dividend since the Great Depression. Today,

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analysts cite aggressive accounting practices as a significant factor in the company's current financial difficulties.

GE should have alerted investors, prior to the recent troubles, of what now appears to be an over-reliance on its tax planning and other accounting measures that increased risk. If, in fact, accounting gimmicks played a role in the financial troubles, investors should have had some understanding of just how aggressive the company was applying tax avoidance strategies. While investors could not have predicted a loss of 54% in share value in a one-year period between 2017 and 2018, questions surrounding the sustainability of the tax plans would certainly have been included in any risk assessment given the changing tax laws in recent years.

Global markets have made it easier than ever before for multinational companies to engage in aggressive tax planning. The link between where companies create values and have economic activity and where they book profits and pay taxes has been all but broken. As laws and interpretations of laws change at this rapidly increasing rate, uncertainties cause confusion and potential risk. For example, ValueClick International, like many companies, have their European headquarters based in Ireland. The company then contracted for marketing and sales support, management services, and administrative support including human resources, accounting and other services with a French based subsidiary to operate in France. Profits were booked in Ireland until a 2013 audit by French tax authorities determined that the profits were subject to French tax. ValueClick challenged the decision and prevailed in Court. While a seeming win for ValueClick, an analysis by MNE Tax, a publication dedicated to multinational tax and transfer pricing news, noted that, "[n]evertheless, it must be stressed that this decision, as well as the cases cited above, are based on the currently applicable tax conventions. These do not yet incorporate the developments proposed by the OECD as part of its BEPS plan."

Companies plan based on tax rate arbitrage and take advantage of favorable tax holidays all which may span multiple jurisdictions. It may, however, exploit tax law weaknesses resulting in significant exposures to changes in any one regime or challenge by an economic union such as the EU in the case against Apple in Ireland. Investors, unfortunately, often have little idea about how the companies manage taxes.

In recent years, profits reported by multinational corporations in some nations has exceeded those nations' GDPs. For example, in a 2015 CRS report, author Jane Gravelle found several countries including Bermuda, Cayman Islands, British Virgin Islands and the Marshall Islands all reported corporate profits that were several times that of the national GPD. Further, the early filings of U.S. corporations with the IRS under the OECD's BEPS agreement provide more evidence of profit shifting. Reporting companies claimed substantially more profit (2016 numbers) in the Cayman Islands ($US 23.79 billion) than they did in China ($US 17.59 billion), American's largest trading partner.

Tax law changes in certain jurisdictions may also dramatically impact companies' reported profits. For example, a recent Federal Deposit Insurance Corporation report found that a 2017 tax law change in the United States boosted banks' profits by about $29 billion, or over 30 percent in 2018. Much of the boost was from offshore tax strategies. It is unclear if the increase is sustainable given evolving tax laws internationally.

Without a good understanding of a company's international tax picture, including all of its subsidiaries and affiliates, investors cannot adequately assess the profitability of a company or its risks. A 2013 hearing of the U.S. Senate Permanent Subcommittee on Investigations revealed that Apple booked $US 30 billion in "stateless" income. Prior to the investigation, there was no indication that Apple had so aggressively applied international tax rules. The company also booked profits in Ireland pursuant to a specially negotiated agreement with the country. When the Securities and Exchange Commission sent a follow-up letter asking for additional information, Apple replied that there was no need for concern, provided essentially no additional information and gave stakeholders no indication that their strategy could put the company at risk for significant potential tax liability. As has been widely reported, Apple was later told to pay Ireland $US 14 billion due to its illegal, previously unknown strategies.

Engagement with Stakeholders: We support the requirement for disclosure of the approach to stakeholder engagement. Rapidly changing tax laws, interpretations of tax laws and changes to regulations and guidance all heighten the risks associated with global tax planning. Apple's dismissal of the SEC inquiry and, by extension, its stakeholders was suggestive of how it chooses to engage with stakeholders. The limited disclosures we see under current rules suggest the company continues to engage in aggressive tax planning. Without better engagement with stakeholders it is impossible to assess if these practices are sustainable.

Jurisdictions and Entities: We support the disclosure of resident entities; their activities and number of employees. As the OECD guidelines on country-by-country reporting recognize, there is substantial value to investors in requiring public companies to disclose all of their subsidiaries. Companies in the U.S. are currently required to publicly disclose a list of "significant" subsidiaries only. As noted in a 2016 letter from the Investor Advisory Committee to the SEC, by not requiring disclosure of all subsidiaries, there is a possibility that investors may not have "a complete understanding of a company's structure and leaves open the possibility of undisclosed pockets of meaningful firm-specific and systemic risk."

The use of subsidiaries, on and offshore, in complex international tax strategies is very high. For example, the vast majority of Fortune 500 companies have at least one subsidiary in a country identified as a tax haven.

As the importance of information about offshore activities and taxes has increased, the amount of disclosures has decreased. Today, investors and other stakeholders are actually receiving less information than they used to. One academic study looking at the subsidiaries disclosed by Google and Oracle found that 98 percent and 99 percent of these companies' subsidiaries disappeared from shareholder disclosure documents between 2009 and 2010, even though most of those subsidiaries appeared to be active a year later. While companies may create and dissolve subsidiaries for any number of reasons, after Citizens for Tax Justice highlighted Nike's numerous subsidiaries in Bermuda in a report in 2013, the following year, half of those subsidiaries disappeared from its SEC filing. These large U.S. corporate issuers thought these subsidiaries were important enough to disclose one year, but as scrutiny on tax havens and their potential tax liabilities increased, these leading U.S. corporations decided that the disclosures were no longer important. Not one has explained why. The resulting decrease in information available to investors and regulators appears to be a clear failure for public policy.

Revenue, Profit, Assets and Tax information: We support the proposal's required disclosures under Section XXX-5. These disclosures provide a critical snapshot of how companies are implementing their tax strategies. Specific categories listed in the GRI proposal include:

- Number of entities;
- Names of principle entities;
- Primary activities of entities;
- Number of employees;
- Total revenues broken out by third-party sales and intra-group transactions of the tax jurisdiction and other tax jurisdictions;

- Profit/loss before tax;
- Tangible assets other than cash and cash equivalents;
- Corporate tax paid on a cash basis;
- Corporate tax accrued on profit/loss;
- Reasons for any difference between corporate tax accrued on profit/loss and: (a) the tax due if the statutory tax rate is applied to profit/loss, and (b) the tax due if the statutory tax rate is applied to profit/loss before tax; and
- Significant tax incentives.

The Institute for Taxation and Economic Policy did a brief analysis of the importance of various reporting categories and noted the following:

Disclosures involving the volume and value of intra-group sales and purchases are important to identify whether services are billed in the same jurisdiction in which they are received, whether intra-group transactions are being routed and re-invoiced through tax havens and whether sales have been relocated for tax purposes.

The presence of significant profit in locations where most purchases and / or sales are intra-group might indicate artificial relocation of profits, while the absence of profits in locations where it would be expected may indicate the existence of transfer pricing or other types of aggressive tax planning to reduce revenues or inflate costs.

Tangible asset information by country is important in assessing whether those assets justify the level of profit reported. The information can also be used to calculate and compare the rate of return on capital—a key measurement for investors and analysts. It can also help assess profit shifting. The more assets, the more "real" operations an entity is likely to have in the country. This may be extremely valuable for investors looking to better understand a company's operations and risks.

With revenue, profit and asset information, taxes, both paid and accrued, provide stakeholders with the information necessary to asses a company's risk appetite. Unusually low effective tax rates in high revenue and asset jurisdictions suggests a more aggressive approach to tax planning.

Information on tax incentives, especially in the form of public subsidies, can help clarify situations where taxes appear to be potentially artificially low.

To provide the necessary assurance to stakeholders that the disclosures accurately reflect a company's position, the data should reconcile with global totals. This is a common sense requirement. Complications in reconciliation raise questions about the accuracy of the data and provide further evidence on the need for such disclosures.

The standards as written would provide for more stable and sustainable companies and local economies. We urge GRI to move forward to approve these standards without changes that would reduce the benefits of the increased disclosures.

Sincerely

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