May 31, 2019

Shayne Kuhaneck
Acting Technical Director
File Reference No. 2019-500
FASB, 401 Merritt 7
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Re: File Reference No. 2019-500: Comments on the Revised Exposure Draft for the Proposed Accounting Standards Update to Income Taxes (Topic 740)

Dear Director Kuhaneck and Members of the Board,

We appreciate the opportunity to offer these comments on the Financial Accounting Standards Board's (FASB) Revised Exposure Draft for the Proposed Accounting Standards Update to Income Taxes (File Reference No. 2019-500). Our signatories together represent investments totaling over $1 trillion.

As investors, we support increased transparency in tax reporting by multinational corporations to enable us to appropriately assess and manage risks to our investments and to the broader economy. While we appreciate the recognition by FASB that tax transparency is of growing concern to investors, we are disappointed that the new proposed standards fall far short of what we believe is needed to help us — and other investors — make sound decisions when investing in U.S. companies.

The FASB proposal to disaggregate corporate income and tax information into foreign and domestic totals may be of marginal assistance to some policymakers, who may review the U.S. versus non-U.S. information as helpful to evaluate tax, trade, or other policy reforms. Yet, investors do not see the world in such binary, black and white terms of foreign vs. domestic. Instead, sound investment decisions require country-by-country information to properly assess the location of business activity and profits, as well as the potential presence and risks of aggressive tax strategies. Investors and analysts who make difficult decisions about where and how to invest across countries and regions are the primary users of financial statements, after all. FASB should be laser-focused on what the users (e.g. investors like us) of the financial statements actually need.

As detailed below, income and tax information at the country-by-country level is what investors require to better understand a company's financial, reputational, and economic risks, gauge their level of risk tolerance, and make informed investment decisions. Given the global movement around tax transparency — with 80 percent of companies surveyed by Deloitte expecting public country-by-country reporting to be adopted in the next few years[1] — failing to conform to emerging uniform global standards for those who invest in U.S. companies will put us at a competitive disadvantage, as well as likely require FASB to go back to the drawing board to re-propose these rules.

Financial Risk

There are numerous recent examples of multinational corporations at odds with tax authorities — examples with which the Board is no doubt quite familiar, including Amazon, Apple, Caterpillar,

[1] *Deloitte*, "2018 BEPS Global Survey," 2018, https://www2.deloitte.com/us/en/pages/tax/articles/beps-global-survey.html.

Chevron, Facebook, Google, Hewlett-Packard, McDonald's, Microsoft, Nike, Shell, Starbucks, and many other multinationals.[2] The evidence strongly suggests a growing trend toward government crackdowns on aggressive tax planning used by companies, not only to minimize their tax liability, but also to achieve hidden competitive advantages and even generate profits through tax refunds and other tax benefits. Evidence also shows that when governments take action against high-risk corporate tax practices, the financial consequences for the affected corporations can be severe.[3]

Without adequate information, investors may be unaware that companies are taking tax risks that provide modest short-term benefits but create uncertainty and instability, ultimately affecting longer-term value. Consider the example of General Electric (GE).

In 2018, after many years of aggressive tax planning, British tax authorities began looking closer at how GE interpreted its tax liabilities. In an email to investors last November that downplayed its tax risk, GE wrote, "Based on current law and guidance, we believe our current accrual is a reasonable estimate for the enactment of tax reform."[4] Laws and interpretations of laws are changing at a rapid rate, and this assurance came on the heels of an announcement by GE that it experienced a $22 billion quarterly loss. The large loss 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, analysts cite aggressive accounting practices as a significant factor in the company's current financial difficulties.[5]

Country-by-country reporting would have alerted GE investors, prior to the recent troubles, of what now appears to be an overreliance 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 clarity about just how aggressive the company was applying tax avoidance strategies. While investors could not have predicted a loss of 55 percent in share value in a one-year period between 2017 and 2018,[6] questions surrounding the sustainability of the tax plans should have been included in any risk assessment, given the changing tax laws in recent years.

GE is one instance of aggressive tax strategies which have surprised investors with unanticipated negative developments across industries. Other examples of largely hidden tax strategies surprising investors include Apple's €13 billion European tax assessment rejecting its claim that its three Irish subsidiaries could avoid declaring any tax residence,[7] Caterpillar's $2 billion U.S. tax assessment after the IRS invalidated its $55 million Swiss tax shelter,[8] and Chevron's A$340 million fine after an Australian court ruled against the company's high-risk tax interpretations.[9] These and other examples of negative

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2 *The FACT Coalition*, "Muddled Markets: Investors Increasingly at Risk from Lack of Disclosures about Corporate Tax Practices," November 2018, https://thefactcoalition.org/wp-content/uploads/2018/11/Muddled-Markets-FACT-Coalition-Report-FINAL.pdf.

3 Winters, Patrick, "UBS Investors Revolt Over Record French Tax Evasion Penalty," *Bloomberg*, May 2, 2019, https://bloom.bg/2Z2cfyP.

4 Ajmera, Ankit and Alwin Scott, "GE dismisses talk that it may owe billions of dollars in taxes," *Reuters*, November 5, 2018, https://reut.rs/2WyzqUa.

5 Ibid.

6 *Yahoo Finance*, "General Electric Company," 2017-2018, https://finance.yahoo.com/quote/GE/history?period1=1512104400&period2=1544850000&interval=1mo&filter=history&frequency=1mo.

7 Pearl, Morris, "How Companies Like Apple Dodge Taxes and Their Own Investors," *The New York Times*, September 21, 2016, https://nyti.ms/2HLYgHG.

8 Cordova, Elisabeth Butler, "Caterpillar's $2 billion tax fight with the IRS could change how US companies do business," *CNBC*, January 2, 2018, https://cnb.cx/2wuIR8j.

9 Wells, Peter and Vanessa Houlder, "Chevron loses landmark tax case on transfer pricing," *Financial Times*, April 21, 2017, https://on.ft.com/2Wh0bNg.

corporate tax avoidance rulings have led — not only to negative financial consequences for specific corporations — but also to deepening public unrest and distrust of corporate tax practices.

The Exposure Draft notes, at BC25, stakeholders' concerns that increased tax disclosures will lead to higher corporate tax rates, and cites "the cost and complexity concerns and the potential issues relating to the decision usefulness of information" for its decision against developing country-level reporting standards. We believe this decision ignores the critical need for investors to have access to the tax information to evaluate a corporation's ongoing profitability and financial risk on a country-by-country basis.

By giving deference to concerns that new country-by-country reporting standards would lead to higher taxes, we believe FASB misses the crucial point that unanticipated clawbacks, fines, and tax assessments in response to high-risk, hidden tax avoidance schemes are already happening under the current reporting requirements. Disclosure rules may once have allowed aggressive tax planning to continue with impunity, but, today, increasing government and public scrutiny to that type of tax planning has opened the door to heightened risk — including large fines and sanctions. Country-level reporting is essential to provide investors with the material information they need to properly assess what is now a largely hidden risk.

If increased disclosures lead some companies to reassess their tax strategies, it may be because management and the board do not believe these practices can survive the scrutiny of the investors who ultimately have the most skin in the game. We believe that outcome provides all the more reason for providing investors with the type of country-level information that will help them assess risk. Higher risk tax strategies may also be suggestive of overall risk tolerance and can provide the investor with insights when making investment decisions.

Moreover, a growing number of investors are questioning whether minimal tax disclosures coupled with aggressive tax practices are not good for the corporate bottom line — as illustrated by the greater tax disclosure requirements advocated in recent UN Principles for Responsible Investment (PRI) publications[10] and Global Reporting Initiative (GRI) draft disclosure standards.[11] Recent OECD actions establishing country-by-country reporting for large multinational corporations are still more evidence of the growing worldwide consensus on the need for multinational corporations to provide country-by-country tax disclosures. At present under the OECD BEPS Action Plan, 77 countries around the world require companies to disclose country-by-country tax and financial information to tax authorities. This is expected to increase to over 100 once all members of the OECD Inclusive Framework implement this new global standard.[12] Non-public country-by-country reporting is, in essence, the law of the land, and the case is closed that tax authorities need this information to do their job. The question here becomes whether investors can also access this information to make informed investing decisions. FASB should take note of those expressions of investor and government support for greater corporate tax disclosures and require disclosure frameworks that reflect this new reality.

[10] PRI publishes a set of recommended principles that companies should adopt to be perceived as sustainable and responsible. The list includes guidelines on reporting tax information transparently on a country-by-country basis. See more: Principles for Responsible Investment. "Investors' Recommendations," https://www.unpri.org/governance-issues/recommendations-onevaluating-corporate-tax-transparency-/3136.article.

[11] Global Reporting Initiative, "Disclosures on tax and payments to governments," https://www.globalreporting.org/standards/workprogram-and-standards-review/disclosures-on-tax-and-payments-to-government/.

[12] *OECD*, "OECD/G20 Inclusive Framework on BEPS: Progress Report July 2017-June 2018," July 22, 2018, http://bit.ly/2XkeFZl.

With retirement savings and other longer-term investments in the financial markets, investor tax transparency concerns are critical for FASB to consider. By elevating issues around a potential policy outcome — increases in corporate tax rates — FASB both minimizes the current costs of opacity and elevates the interests of some issuers above investors.

The financial risks of aggressive tax strategies and minimal disclosures are well-documented and should be of primary concern for those setting standards for public reporting.

Reputational Risk

We believe that secrecy exposes multinational companies to reputational risk, and transparency should help defray this risk by removing any element of surprise and the appearance of scandal, especially when sensitive tax information is unexpectedly revealed.

When news leaked that Vodafone, a European Union (EU)-based telecommunications firm, was found to be engaging in aggressive tax avoidance in the United Kingdom resulting in surprisingly low effective tax rates, there were protests in front of Vodafone storefronts around the country.[13] The reputational damage forced the company to develop a crisis communications plan and make changes to the way they reported revenue and tax information. With country-by-country reporting, Vodafone could have avoided an unnecessary and costly diversion of company resources.

We believe comparing the Vodafone experience to that of the large financial institutions in the EU is illustrative. The European Union's Capital Requirements Directives IV of 2013 required large banks to report certain revenue and tax information on a country-by-country basis. The information has been public for several years, and there have been no protests nor reputational challenges to the complying companies.

When companies are required to be open and forthcoming — when they get ahead of 'the leak' and present the information in context to tell their own story — there is much less of a chance their tax information will spark a public backlash. In the rationale for the Exposure Draft, FASB seems to have inverted the risk factors.

Economic Risk

The global economy has opened new, geographically diverse markets to multinational corporations and exciting new opportunities for investors, as companies cite access to foreign markets as a significant driver of growth.

Emerging markets, in particular, are a driver of growth and will remain so as long as the economies of those countries remain viable. Improved infrastructure, rule of law, and the provision of basic services are integral to a functioning economy. In fact, the Commission on Growth and Development, led by Nobel laureate economist Michael Spence, found that countries with the best growth performance invested higher percentages of their GDP in public services than less well performing economies.[14] As a result, stable revenue sources are critical to market growth.

To better assess and manage risk, investors need to know in which countries a company is operating and what are the company's top line financial commitments and tax arrangements. Country-by-country

[13] *BBC News*, "Vodafone shops blockaded in tax protest," October 30, 2010. https://www.bbc.com/news/business-11658950.

[14] Commission on Growth and Development, "The Growth Report: Strategies for Sustained Growth and Inclusive Development Report," *The World Bank*, 2008. http://bit.ly/2MmV61t.

corporate tax disclosures will help identify countries that are facilitating corporate tax dodging and thereby expose tax risks currently hidden from investors.

FASB's failure to include country-level reporting with only a narrow focus on disaggregating income and tax data only between U.S. and foreign amounts does not provide the information investors need.

Global Accounting Trends

According to a 2019 study, there is growing support among multiple sectors of the investing, business, and policymaking communities around the world to mandate increased corporate tax disclosures on a country-by-country basis.[15] The following excerpts from the report document this trend.

Investors and Analysts

- Norges Bank Investment Management, which manages the Norwegian sovereign wealth fund with approximately US$915 billion in assets under management, has stated that "multinational enterprises should publish country-by-country breakdowns of how and where their business model generates economic value, where that value is taxed and the amount of tax paid."
- The United Nations' Principles for Responsible Investment, a network representing investors with more than US$70 trillion in assets under management, has called on companies to publish tax information on a country-by-country basis and to become more transparent on their overall approach to tax policy and how their tax policy interacts with their broader business and sustainability strategies.
- The Certified Financial Analysts' Institute, with 137,000 members in 150 countries, highlighted the importance of tax disclosures as a vital source of information for investors in comments to the Financial Standards Accounting Board.
- The Global Reporting Initiative, a standard-setting body that lists 75 percent of NASDAQ 250 companies and roughly 13,000 different entities as adhering to its reporting guidelines, recently proposed new tax transparency standards that include public country-by-country reporting.

Policymakers

- As of March 2019, the tax authorities of the United States and 77 countries collect and exchange country-by-country reports according to a standard set by the Organization for Economic Cooperation and Development (OECD).
- The EU Capital Requirements Directive IV (CRD IV), which was signed into law in 2013, requires large banks and other financial institutions within the European Economic Area to publicly disclose a variety of information on a country-by-country basis.
- The EU Accounting Directive, an industry-specific reporting guideline passed in 2013 and aimed at increasing transparency within designated sectors, calls for firms active in the extractive industries or logging of primary forests that meet specific firm-size thresholds to publicly report certain financial and tax information on a country-by-country basis.
- The Canadian government enacted the Extractive Sector Transparency Measures Act (ESTMA), which brings Canadian companies in the oil, gas, and mineral sectors under country-by-country type requirements.
- The UK Parliament gave the UK's tax agency, HM Revenue and Customs, the authority to compel multinationals to publish country-by-country reports, upon request.

[15] Christian Freymeyer, "Trending Toward Transparency: The Rise of Public Country-by-Country Reporting," *The FACT Coalition*, April 23, 2019, http://bit.ly/2MkhR6j.

- The European Parliament and European Commission have approved different versions of a proposal mandating public country-by-country reporting for large companies doing business in Europe; the Council of the European Union has yet to pronounce itself on the issue.
- The U.S. Congress is considering various piece of legislation that would require publicly traded companies to report income and tax information on a country-by country basis.

Businesses and CEOs

- In 2014, PwC conducted a survey of more than 1,300 CEOs around the world, and 59% stated that they believe multinational corporations should be required to disclose basic financial information, such as revenue, taxes paid, and number of employees on a country-by-country basis. And just one year later, a survey of the Financial Times Stock Exchange (FTSE) 100 conducted by the UK-based charity Christian Aid found little staunch opposition when asked about whether public country-by-country reporting should be implemented.
- Vodafone, Unilever, BHP Billiton, and Rio Tinto are among the multinational companies that publish, in varying degrees, country-by-country reports of tax and payment information.
- In 2018, Deloitte surveyed 447 tax and finance managers in multinational companies in 40 countries. 80 percent of the respondents expect public country-by-country reporting to be adopted in the next few years; 86 percent of respondents believe that tax structures implemented today are under greater scrutiny by tax administrations now, than they would have been a year ago; 85 percent of respondents are concerned that tax authorities will, irrespective of any actual legislative changes, increase tax audit assessments.

These steps establish a growing global momentum that public access to corporate tax transparency at a country-level is inevitable. We believe FASB should be leading these worldwide trends toward greater corporate tax disclosures. We would rather get these rules right this time to meet the emerging global disclosure trends, rather than have to go back at a later date and reopen this.

An Appropriate Standard

We respectfully suggest the latest FASB proposal falls short of what investors need to make informed investment decisions. The proposal to disaggregate corporate income and tax information into two big groups — foreign and domestic — will not provide the disclosures needed to address basic questions about tax risk. Tax laws are necessarily a country-by-county exercise, as tax enforcement and penalties are the product of tax authorities in individual jurisdictions. In short, it matters whether the foreign amounts to be disclosed are in Germany or Bermuda. Combining foreign amounts from an unknown number of countries, each with its own tax laws, policies, and enforcement agendas, will not help investors meaningfully analyze a company's tax practices or risk. Under the current FASB proposal, investors will not have the basic, comparative information we require to assess corporate tax risk.

A better approach, supported by numerous investors, [16] is the standard proposed by the Global Reporting Initiative.[17] Key elements of the proposal include the following information reported to investors on a country-by-country level:

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[16] *Global Reporting Initiative,* "Strong backing for tax transparency from investors," March 28, 2019, https://www.globalreporting.org/information/news-and-press-center/Pages/tax-transparency-investors.aspx.

[17] *Global Reporting Initiative,* "Exposure Draft - Tax & Payments to Governments Standard," March 27, 2019, https://www.globalreporting.org/standards/media/2213/exposure-draft-standard-for-tax-and-payments-to-governments-with-survey-questions.pdf.

- 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:
    - the tax due if the statutory tax rate is applied to profit/loss, and
    - the tax due if the statutory tax rate is applied to profit/loss before tax; and
- Significant tax incentives.

Many multinational companies are already reporting this type of information to their home country tax authorities; others have been providing this type of information in public filings for years. While the disclosures to tax authorities and in public filings may differ from compliance with GAAP, the raw data has already been compiled, which means GAAP-compliant disclosures would not comprise a significant new expense.

We would also note that companies and, now, tax authorities have this information. The only stakeholders left in the dark are those putting their money at risk.

We thank you for your consideration of our views and urge you to reconsider the Exposure Draft in light of investor needs.

Should you have any questions, feel free to contact John Keenan (JKeenan@afscme.org, +1 202-429-1232) or Nicholas Lusiani (Nicholas.Lusiani@oxfam.org, +1 202-777-2912).

Sincerely,

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

American Federation of State, County and Municipal Employees (AFSCME)

BMO Global Asset Management

Boston Common Asset Management

Communications Workers of America (CWA)

CtW Investment Group

Domini Impact Investments LLC

Etica Sgr - Responsible Investments

Franciscan Sisters of Perpetual Adoration

First Affirmative Financial Network

Friends Fiduciary Corporation

Fund for Constitutional Government

Harrington Investments, Inc.

Illinois State Treasurer's Office

Interfaith Center on Corporate Responsibility

International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART)

International Brotherhood of Electrical Workers

International Brotherhood of Teamsters

Ircantec

JLens Investor Network

Local Authority Pension Fund Forum

Maryknoll Sisters

Midwest Coalition for Responsible Investment

Miller/Howard Investments, Inc.

Missionary Oblates

National Education Association

Natural Investments

New York City Office of the Comptroller

Northwest Coalition for Responsible Investment

OIP Investment Trust

Oxfam America, Inc.

Pension Plan for the Employees of the Canadian Labour Congress

Rathbone Greenbank Investments

School Sisters of Notre Dame Cooperative Investment Fund

Seventh Generation Interfaith Coalition for Responsible Investment

Shareholder Association for Research and Education

Sisters of Charity of Saint Elizabeth

Sisters of St. Dominic of Caldwell, NJ

Sisters of St. Francis of Philadelphia

Stewart R. Mott Foundation

The Sustainability Group of Loring, Wolcott & Coolidge

Trillium Asset Management

Tri-State Coalition for Responsible Investment

UAW Retiree Medical Benefits Trust

UNITE HERE International Union

United Food and Commercial Workers International Union Pension Plan for Employees

Ursuline Sisters of Tildonk, U.S. Province

Vision Super

Zevin Asset Management