FACTCOALITION
Financial Accountability & Corporate Transparency

May 31, 2019

Mr. Shayne Kuhaneck
Acting Technical Director
File Reference No. 2019-500
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

RE: Proposed Accounting Standards Update (Revised) – Income Taxes (Topic 740), File Reference No. 2019-500

Dear Mr. Kuhaneck:

We appreciate the opportunity to comment on the Financial Accounting Standards Board's (FASB) revised exposure draft of the proposed updated accounting standards on tax disclosures (File Reference No. 2019-500). We write to express our disappointment that the revised exposure draft does not include appropriate and necessary tax disclosures for stakeholders in the capital markets to manage new and emerging risks.

The Financial Accountability and Corporate Transparency (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]

For the better part of the last decade, the Coalition and our partners have researched and written extensively on international corporate tax policy, profit shifting, and the role of low- and no-tax jurisdictions in corporate tax planning. We have engaged with experts and various market constituents including investors, members of the accounting sector, academics in the field, policymakers, companies, and other stakeholders to ensure all stakeholders have the tax information they say is necessary for functioning capital markets.

Troubling Rationale

For many years, open and transparent capital markets have made the U.S. system a model for the world. The combination of FASB's accounting standards and the Securities and Exchange Commission's (SEC) additional shareholder disclosures have provided both unprecedented opportunities and reasonable protections for investors and other stakeholders.

Unfortunately, with this draft, the U.S. will be stepping back from its historic leadership role. Global trends are moving toward transparency. In 2014, PricewaterhouseCoopers conducted a survey of more than 1,300 CEOs around the world, and 59 percent stated that they believe multinational corporations

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

should be required to disclose basic financial information, such as revenue, taxes paid, and number of employees on a country-by-country basis.[2] 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 (CBCR) should be implemented.[3] These are just two examples highlighted in an April 2019 paper produced by the FACT Coalition that examined the advancements in transparency.[4] This process is an opportunity for the U.S. capital markets to shape the trend.

In reviewing the exposure draft, we were surprised by the overtly political and policy-based decision making from FASB. The proposal, in parts, reads less like an analysis of appropriate accounting standards for users to assess risk and more like a discussion of corporate tax policy. When FASB explains its rationale by including concerns about, "One taxing authority using information about a different taxing authority to collect additional tax revenue," or that, "Individuals and public interest groups pressuring governments to increase taxes on a reporting entity because they perceive that other countries are receiving more tax revenues than their country," the Board strays from its mission. The problem with these statements, as detailed below, is that FASB moves away from its core areas of expertise, ignores current practice, and mischaracterizes potential outcomes.

The Proposal

The Coalition strongly supports the disaggregation of income (or loss) from continuing operations before income tax expense (or benefit) between domestic components and foreign components and of income tax expense (or benefit) from continuing operations among federal, foreign, and state taxes. Nevertheless, these changes provide only modest additional information considering that public companies are already required to provide this disaggregation for tax expenses. We welcome the guidance that the federal vs. foreign vs. state disaggregation should be done before intra-entity elimination, and that U.S. taxes paid on foreign income should be reported as U.S. taxes.

We call on FASB to reconsider its position against further disaggregating tax paid by country, by tax year, and breaking out penalties and interests. These disclosures are linked and, together, provide useful information to assess the sustainability of effective tax rates. As the exposure draft points out, they could be produced at relatively little cost.

As the exposure draft notes, the rate reconciliation is one of the most useful disclosures about income tax. We therefore recommend FASB adopt a threshold for reconciling items that is not higher than the 5 percent required by the SEC.

Country-by-Country Reporting

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2 *PricewaterhouseCoopers*. "17th Annual Global CEO Survey: Tax strategy, corporate reputation and a changing international tax system," 2014, https://www.pwc.com/gx/en/tax/publications/assets/ceo-survey-tax-perspectives.pdf.

3 Christian Aid surveyed dozens of FTSE100 companies and found that only a small minority were wholly opposed to the idea of reporting on a country-by-country basis, while many others were indifferent or even supported more disclosure. See more: https://endsecrecy.eu/files/2015_09_country-by-country-survey.pdf.

4 Freymeyer, Christian, "Trending Toward Transparency: The Rise of Public Country-by-Country Reporting", *The FACT Coalition*, April 2019, https://thefactcoalition.org/wp-content/uploads/2019/04/Trending-Toward-Transparency-April-2019-FINAL.pdf.

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Many commenters to the first exposure draft recommended FASB integrate country-by-country reports into the financial statements. We would like to take this opportunity to respond to the reasons provided by FASB in its second exposure draft (paragraph BC25) to reject that recommendation.

Reason #1: "One taxing authority using information about a different taxing authority to collect additional tax revenue."

Given FASB's repeated statements to the FACT Coalition that they are not interested in making tax policy, this statement is somewhat surprising. However, if FASB does see a role for itself in this area, then they should consider current practices and base their decision on actual experiences.

Tax authorities are already cracking down on aggressive corporate tax avoidance.[5] As we have written previously, the financial risks to shareholders are well documented and growing.[6] They are not waiting for public reporting of this information. To assume so is to ignore the growing number of enforcement actions around tax avoidance and the adherence by OECD member states to the Base Erosion and Profit Shifting (BEPS) Initiative.

Under the BEPS agreement, tax authorities have the information. The corporations are producing the information. The stakeholders left in the dark are the investors. Public CBCR levels the playing field for those whom FASB is charged with protecting.

Reason #2: "Individuals and public interest groups pressuring governments to increase taxes on a reporting entity because they perceive that other countries are receiving more tax revenues than their country."

Individuals and public interest groups are already seeing less revenue from corporate taxation and are calling for a crackdown on the use of offshore tax havens. They are not waiting for public reporting of this information any more than tax authorities.

We agree that public distrust about the international corporate tax system persists, but trust will not be restored without greater transparency — including public CBCR.

There is a growing trend toward tax transparency, which has not resulted in public relations backlashes for the companies that have become more transparent.[7] To the contrary, it is secrecy that spurs civil society to scrutinize companies and use any bit of information that is available to publicly pressure companies. Public CBCR can generate a dialogue between civil society and companies about their tax practices. Companies have the opportunity to explain results that might erroneously suggest aggressive tax planning.

Reason #3: "The perception that an entity is operating in a low-tax country for tax advantages when that is not the case."

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[5] *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.

[6] Ibid.

[7] Freymeyer, Christian, "Trending Toward Transparency: The Rise of Public Country-by-Country Reporting", *The FACT Coalition*, April 2019, https://thefactcoalition.org/wp-content/uploads/2019/04/Trending-Toward-Transparency-April-2019-FINAL.pdf.

In making this statement, FASB seems to have conflated risk factors. The risk to investors is in the privately held information leaking or otherwise becoming the focus of breaking news. When companies report ahead of a potential 'scandal,' the experiences have been positive. Investors and other stakeholders benefit from the planned release of the information and are able to describe the information in context.

To the extent that lawmakers do use the public information, the data would allow for informed decision making. Any changes would be publicly debated and decided. Companies and investors would be able to plan accordingly, a scenario far preferable to surprise enforcement actions based on misunderstood data leaked to a news organization.

Reason #4: "Potentially compromising the ability of one country to negotiate with other countries."

The European Union is considering mandating public CBCR. There has been overwhelming majority support in the European Parliament.[8] If CBCR information were included in the financial statements of U.S. public companies, that would likely tip the European Union into adopting the proposed CBCR directive, which would then move the OECD member states.

In a 2016 briefing, Goldman Sachs advised investors to invest in companies paying high effective tax rates in order to minimize exposure to hidden tax liabilities.[9] That was remarkably blunt advice for an institution rich in analytical capacity. But to do analysis, one needs data. Country-by-country income and tax data would allow analyses of effective tax rates by residence and source country, providing critical information for assessing risk.

A Better Approach

Tax policy is country-specific; therefore, CBCR is required to assess risks country-by-country.

The Coalition believes that the draft standards proposed by the Global Reporting Initiative offer an appropriate model for FASB.[10]

The standards include: [11]

- 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;

[8] *European Parliament*. "Multinationals should disclose tax information in each country they operate," July 4, 2017, http://www.europarl.europa.eu/news/en/press-room/20170629IPR78639/multinationals-should-disclose-tax-information-in-each-country-they-operate.

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

[10] Gary Kalman and Clark Gascoigne, "Letter to GRI in Support of Exposure Draft on 'Tax and Payments to Governments'," *The FACT Coalition*, March 15, 2019, https://thefactcoalition.org/letter-to-gri-in-support-of-exposure-draft-on-tax-and-payments-to-governments?utm_medium=policy-analysis/letters-to-agencies.

[11] *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.

- 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.

Thank you for your consideration of these comments and for your ongoing 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.

Should you have any questions, please feel free to contact Clark Gascoigne at +1 (202) 810-1334 or cgascoigne@thefactcoalition.org.

Sincerely,

Gary Kalman
Executive Director

Clark Gascoigne
Deputy Director