FACTCOALITION
Financial Accountability & Corporate Transparency

February 25, 2021

The Honorable Brad Sherman
Chairman
Subcommittee on Investor Protection,
Entrepreneurship and Capital Markets
U.S. House of Representatives Committee on
Financial Services
Washington, DC 20515

The Honorable Bill Huizenga
Ranking Member
Subcommittee on Investor Protection,
Entrepreneurship and Capital Markets
U.S. House of Representatives Committee on
Financial Services
Washington, DC 20515

RE: Virtual Hearing titled "Climate Change and Social Responsibility: Helping Corporate Boards and Investors Make Decisions for a Sustainable World"

Dear Chairman Sherman and Ranking Member Huizenga,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, we appreciate the opportunity to comment on your hearing titled, "Climate Change and Social Responsibility: Helping Corporate Boards and Investors Make Decisions for a Sustainable World." The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global tax system that limits abusive tax avoidance and to curb the harmful impacts of corrupt financial practices.[1]

We are writing to support including corporate disclosures of key financial information on a public country-by-country basis – as would be required in the "Disclosure of Tax Havens and Offshoring Act" (H.R. ___), noticed for this hearing – as part of a host of measures that Congress and the Securities and Exchange Commission should consider to help mitigate investor risk and build toward a more sustainable world.

Multinational corporations in the United States and elsewhere have long used provisions in the global tax system to shift profits and avoid paying taxes that they would otherwise be required to pay. IRS aggregate data show that U.S. multinationals booked 41 percent of their foreign profits in just 10 tax havens.[2] Further, a 2018 report by the Institute for Taxation and Economic Policy showed 90 of the Fortune 500 paid nothing in tax; another 50 paying between 0-5 percent.[3]

[1] A full list of FACT members is available at http://thefactcoalition.org/about/coalition-members-and-supporters/.
[2] Internal Revenue Service, "Table 1A: Country-by-Country Report (Form 8975): Tax Jurisdiction Information (Schedule A: Part I) by Major Geographic Region and Selected Tax Jurisdiction, Tax Year 2017", https://bit.ly/3dEQfmi.
[3] Matthew Gardner, Lorena Roque, Steve Wamhoff, "Corporate Tax Avoidance in the First Year of the Trump Tax Law", *Institute on Taxation and Economic Policy*, December 16, 2019; https://itep.org/corporate-tax-avoidance-in-the-first-year-of-the-trump-tax-law/.

Investor Risk

Public country by country reporting (PCbCR) would allow investors, oversight bodies and lawmakers, and civil society watchdogs to identify and address corporate profit-shifting strategies as well as the material risks to investors of aggressive tax avoidance.

Investors need greater transparency of multinational corporate tax practices in order to assess a company's financial, reputation and economic risks; gauge their level of risk tolerance; and make informed investment decisions. Governments internationally are increasingly taking steps to take on multinational tax avoidance strategies. Without adequate information, investors may be unaware that companies are taking tax shortcuts that provide modest-short term gains but in the long-term, create uncertainty, instability, and damage the companies' long-term value.

Take, for instance, Coca-Cola: in November, a U.S. tax court said that Coca-Cola would owe the Internal Revenue Service (IRS) $3.3 billion after getting caught in shifting profits to lower-tax jurisdictions between the years 2007 and 2009. This month, the company warned shareholders they may be on the hook for as much as $12 billion if the IRS uses the same logic in analyzing later years of tax payments. Tax cases can take years to litigate and tie up corporate profits, meaning shareholders may wait a long time to see the returns they expected.

Investors are increasingly taking note of the risks posed by aggressive tax planning. In 2019, Investors representing over $1 trillion in assets under management told the Financial Accounting Standards Board (FASB) that they want PCbCR included in an update to U.S. accounting standards to help them assess these risks.

These inadequacies affect individual investors as well as the entire financial system: the inability to assess risk will ultimately lead to greater volatility in the markets and force investors to place lower valuations on financial assets.

Sustainability

The FACT Coalition believes that democratic societies are underpinned by fair tax systems, accountability for corporations and economic elites, and environments where large-scale corruption by political and economic elites is not tolerated. A crucial component of a fair global tax system is transparency.

Profit shifting by U.S. multinational corporations costs the U.S., by one estimate, $77 billion a year in lost tax revenue. Recent changes to the tax code have also incentivized companies to move real assets and jobs offshore for tax purposes, undermining the U.S. economic recovery. In the developing world, multinational tax avoidance drains resources, making it harder for governments to grow sustainable economies, respond to national crises like the COVID-19 pandemic, and reduce dependence on the U.S. and other aid donors.

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Public country-by-country reporting can help maintain funding for crucial government services restore public trust.

Transparency Is Increasingly Prevalent

As FACT's 2019 report, Trending Toward Transparency, said, public country-by-country reporting (PCbCR), "once an ambitious (but outlier) policy recommendation, is now seen as a common sense tool to help investors and other stakeholders understand the risks involved with aggressive tax multinational tax strategies." The momentum on this issue continues to grow.

While some tax information is now shared between tax authorities on a private basis via an OECD agreement, there is strong evidence of the power that public reporting has in its deterrent effect. Reports show that PCbCR requirements on Europe's banking industry have reduced the use profit shifting to tax havens and increased the effective tax rate of covered banks by several percentage points.

On January 1, the Global Reporting Initiative brought online the first "global reporting standard that supports public disclosure of a company's business activities and tax payments on a country-by-country basis". The adoption came after a broad consultation process received a flood of supportive comments from investors with trillions of dollars in assets under management, civil society, Members of Congress, and some large businesses. While GRI's standards are technically voluntary, 75 percent of the world's largest companies that report their sustainability results use the GRI Standards — while 62 countries have policies that reference or require the use of the GRI Standards for sustainability reporting.

Large multinational companies are also showing the way through voluntary PCbCR disclosures. Since GRI finalized its standard, Vodafone, Royal Dutch Shell, Spanish oil multinational Repsol, and Danish energy company Orsted have issued PCbCR information, leading *The Wall Street Journal* to hail "the Beginning of the End of Tax Secrecy."

Legislators and regulators in other important capital markets are also seriously considering new PCbCR requirements. The European Union is currently close to finalizing mandatory PCbCR requirements for all EU-listed companies after a strong push from the European Parliament. Finally, this morning saw the endorsement of PCbCR by the UN High-Level Panel on International Financial Accountability, Transparency, and Integrity for Achieving the 2030 Agenda (FACTI). This endorsement means that PCbCR has momentum at a global, political level.

Recommendation

It is more important than ever that the U.S. require corporations to provide more information to investors and the public regarding their tax strategies and financial information on a country-by-country basis.

FACT supports House and Senate action to compel the SEC to amend Section 13 of the Securities Exchange Act of 1934 to fully country-by-country reporting of tax and other key financial information as proposed in the draft "Disclosure of Tax Havens and Offshoring Act" (H.R.____) and as previously introduced in the 116th Congress in the House (H.R. 5933) and Senate (S. 1609).

We appreciate the Subcommittee's interest in this important issue. Should you have any questions, please feel free to contact Erica Hanichak at ehanichak@thefactcoalition.org.

Sincerely,

Ian Gary
Executive Director

Erica Hanichak
Government Affairs Director