FACTCOALITION
Financial Accountability & Corporate Transparency

April 2, 2021

The Honorable Ron Wyden
Chairman
Senate Finance Committee
U.S. Senate
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
Senate Finance Committee
U.S. Senate
Washington, DC 20510

RE: March 25 Virtual Hearing titled "How U.S. International Tax Policy Impacts American Workers, Jobs, and Investment"

Dear Chairman Wyden and Ranking Member Crapo,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, we appreciate the opportunity to comment on your hearing titled, "How U.S. International Tax Policy Impacts American Workers, Jobs, and Investment." 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]

For years, the FACT Coalition has warned of the real U.S. economic harm perpetuated by a global race to the bottom on taxes. As it stands, the status quo of the U.S. international tax framework undermines the competitiveness of the American worker, incentivizes the offshoring of U.S. jobs and profits, and detracts from deeper business investment in the United States.

To address these problems, we urge the Committee and its members to consider corporate tax transparency measures and specific international tax reforms, both at the domestic and global level, as central tools in curbing the worst of multinational corporate tax avoidance and its adverse impacts on the U.S. economy.

We endorse recommendations in testimony by Treasury Deputy Assistant Secretary Kim Clausing and Chye-Ching Huang, executive director of NYU's Tax Law Center to reform the Global Intangible Low-Taxed Income (GILTI) tax, overhaul the Base Erosion and Anti-Abuse Tax (BEAT), and consider elimination of the Foreign Derived Intangible Income (FDII).[2] These recommendations have broadly been reflected in the Biden Administration's American Jobs Act plan, announced on March 31, and we hope Congress will

[1] A full list of FACT members is available at http://thefactcoalition.org/about/coalition-members-and-supporters/.
[2] Senate Finance Committee hearing, March 25, 2021, https://www.finance.senate.gov/hearings/how-us-international-tax-policy-impacts-american-workers-jobs-and-investment

work with the Administration to bring it to fruition.[3] We likewise request that Committee members consider legislation requiring multinational corporations to report key financial information – e.g. revenue, assets, employees, taxes assessed and paid – publicly on a country-by-country basis, as an accountability mechanism to ensure corporations are paying their fair share of taxes.

The Problem of U.S. Multinational Tax Avoidance

Profit shifting by U.S. multinational corporations costs the United States, by one estimate, at least $77 billion a year in lost tax revenue.[4] These are much needed resources that should be funding critical public investments in healthcare, education, infrastructure, and other priorities.

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.[5] 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.[6]

It is counterproductive to the goals of a fair and growing economy to allow U.S. companies to pay a lower tax rate abroad than they pay in the United States. Changing the status quo and closing these loopholes will improve the competitiveness of the American worker and make it more appealing for companies to reinvest in here in America.

Recommendation 1: Increase Transparency into Corporate Tax Practices

Any meaningful effort to combat U.S. multinational tax avoidance must shine a greater light on corporate tax practices. We recommend that members of the Committee consider legislation such as the *Disclosure of Tax Havens and Offshoring Act* to require corporations to engage in public country-by-country reporting (PCbCR) of key financial data – e.g. revenue, assets, employees, taxes assessed and paid. Such reform would greatly inform the U.S. debate on how to make U.S. international tax policy work for all Americans and, in the future, help policymakers monitor the effect of reforms and any tax avoidance strategies multinational companies may employ in the future..

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[3] White House, "FACT Sheet: The American Jobs Plan," March 31, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/

[4] Kim Clausing, "Five Lessons on Profit Shifting from the U.S. Country-by-Country Data," Tax Notes, November 24, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736287

[5] 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.

[6] 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/.

While some of this data is already reported to the IRS under an OECD agreement, *public* disclosure of this data would allow investors, oversight bodies, U.S. Congress, and civil society watchdogs to identify and address corporate profit-shifting strategies.

Last year, prior to joining the Administration, DAS Clausing published research that relied on country-by-country data released by the OECD – aggregated across companies – to demonstrate the scale of the U.S. multinational corporate tax avoidance problem. While aggregated data is helpful, company-level disclosures would illuminate much more: DAS Clausing noted, "Only very limited company-specific information is available, and there is a strong case for the public release of these data" to benefit "potential customers, investors, and employees, as well as community members."[7]

There is strong evidence that public reporting has a powerful deterrent effect.[8] Reports show that PCbCR requirements on Europe's banking industry have reduced the use of profit shifting to tax havens and increased the effective tax rate of covered banks by several percentage points.[9] Increasing tax transparency through public disclosure could even force large corporations to clean up the most questionable tax practices.

Legislators and regulators in other important capital markets are 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. The Global Reporting Initiative, an "international independent standards organization that helps businesses, governments and other organizations understand and communicate their impacts", also recently introduced the first global standard on tax transparency. 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." Investors, financial analysts, small business organizations, and civil society groups further endorse public country-by-country reporting.[10]

Recommendation 2: Close Loopholes in the U.S. International Tax System

It is apparent that there must be real reform to the U.S. framework to ensure corporations pay their fair share of taxes. Chief among our recommendations would be 1) equalizing the GILTI rate with the domestic corporate tax rate and applying it on a per-country basis, 2) amending the Base Erosion and

[7] Kim Clausing, "Five Lessons on Profit Shifting from the US Country-by-Country Data," November 24 2020, Abstract, also p. 15, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736287.

[8] "What do we know about the effects of country-by-country reporting?", UNC Tax Center, https://tax.unc.edu/index.php/county-by-county-translational-research/.

[9] Michael Overesch and Hubertus Wolff, "Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance", February 8, 2019, http://bit.ly/Overesch2019. See also Felix Hugger, "The Impact of Country-by-Coutry Reporting on Tax Avoidance," May 2020, https://www.ifo.de/DocDL/wp-2019-304-hugger-corporate-tax-avoidance.pdf.

[10] For a full list of corporations, small business organizations, and investors who have endorsed public country-by-country reporting, see here: https://thefactcoalition.org/fact-sheet-endorsements-for-country-by-country-reporting.

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Anti-Abuse (BEAT) tax to increase covered activity and narrow exemptions, and 3) repealing the provision on Foreign Derived Intangible Income (FDII).

The Committee should consider legislation, like the *No Tax Breaks for Outsourcing Act* (S. 714), that would implement several of these recommendations. The No Tax Breaks for Outsourcing Act would equalize the GILTI foreign tax rate with the domestic U.S. tax rate, apply the GILTI on a per-country-basis, and eliminate the deduction based on tangible assets held offshore. It likewise would repeal the FDII, a deduction under TCJA that effectively favors companies that minimize their U.S. assets, also increasing corporate incentives to move real assets offshore.

Reform the GILTI Tax

Changes to U.S. international tax law instituted through the Tax Cuts and Jobs Act have not only incentivized corporations to shift profits to low tax jurisdictions: they have also offered incentives for corporations to move real jobs and operations offshore. The law guarantees that U.S. multinational corporations will pay at most one-half the domestic rate in federal taxes on their offshore earnings, with many companies paying little or nothing in federal taxes on these earnings. Under the Global Intangible Low-Taxed Income (GILTI) rate, this means that a U.S. multinational company will pay a much lower tax rate if it invests in Ireland than if it invests in Indiana.

The system further incentivizes moving tangible assets – factories, machinery, stores, and the jobs that go with them – offshore. A corporation only pays taxes on the residual foreign profits exceeding the amount equal to the 10 percent value of its tangible assets invested offshore. That means that the bigger the value of tangible assets, the more a company's profits are offset to minimize their tax liability.

Taking this next step – to equalize the corporate tax rate on profits booked domestically or abroad – is the best way to remove incentives for offshoring and tax avoidance.

Overhaul the BEAT

A March 2021 report by the Joint Committee on Taxation demonstrated that the BEAT has had no tangible impact on U.S. multinational corporate tax avoidance practices.[11] In the definition of "applicable taxpayer" under Section 59A(e), Congress should pass legislation to lower the gross receipts exemption level from $500 million to $100 million to make more companies subject to the BEAT tax. Congress should amend Section 59A(e)(C) so that all base erosion payments are taken into account, while removing the arbitrary exemption of less than 3 percent of deductible payments that has incentivized aggressive tax strategies.

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[11] Joint Committee on Taxation, "U.S. International Tax Policy: Overview and Analysis," JCX-16-21, March 2021, https://www.jct.gov/publications/2021/jcx-16-21/.

Repeal FDII

The FDII deduction under TCJA also increases corporate incentives to move real assets offshore. Functionally, the tax preference rewards companies that reduce their U.S. assets. It also creates a new loophole to move corporate intellectual property to the United States to dodge taxes around the world, undermining the tax base of our allies and contributing to a global race to the bottom on corporate taxation. In addition, FDII may violate the World Trade Organization's rule against export subsidies and risks trade retaliation. The Joint Committee on Taxation estimates that repealing FDII would increase U.S. tax revenue by nearly $127 billion over 10 years.

Recommendation 3: Work with the OECD to Establish a Global Minimum Tax

The Biden Administration, under Treasury Secretary Janet Yellen, has committed to re-engaging in the OECD negotiations to combat multinational tax avoidance. The existing political momentum behind Pillar Two will be exceedingly difficult to replicate in the future. It is therefore imperative to seize the moment and avoid setting a low minimum rate that will drag down corporate taxation far into the future.

The U.S. should strengthen existing OECD and international safeguards against offshore corporate tax avoidance by working with allies to institute a strong, global corporate minimum tax that is no less than the U.S. domestic corporate tax rate, does not exempt routine profits, and is applied on a per-country basis, rather than as a global average. The existing political momentum behind Pillar Two will be exceedingly difficult to replicate in the future. Signals from the Biden Administration and U.S. Congress would have a strong impact on these negotiations. It is therefore imperative to seize the moment and avoid setting a low minimum rate that will drag down corporate taxation far into the future.

Conclusion

It is more important than ever that the U.S. combat multinational tax avoidance to make our tax system fairer, raise critically needed revenue, and encourage job creation here in America.

We appreciate the Committee'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	**Erica Hanichak**
Executive Director	Government Affairs Director