

Greater Corporate Tax Transparency: The Case for SEC Action on Public Country-by-Country Reporting

The time is now for the U.S. Securities and Exchange Commission (SEC) to use its authority under current law to require large multinational enterprises (MNEs) to publicly report basic financial information on a country-by-country basis. Public country-by-country reporting (PCbCR) will encourage more efficient capital allocation, reduce market volatility, and improve public policy debates regarding the tax and governance practices of MNEs.

PCbCR is advancing around the world as stakeholders advocate reform with increasing momentum. SEC leadership is needed now to create best-in-class reporting standards that are:

1. most useful to investors in identifying comparative risk;
2. most clear to MNEs reporting this information; and
3. most informational to other stakeholders engaged in policy-making to create more sustainable global financial systems.

FACT is calling on the SEC to begin the public rulemaking process to require full PCbCR for certain large filers in line with international best standards developed by the [Global Reporting Initiative \(GRI\)](#). Doing so would require large MNE filers to identify on a country-by-country basis: a list of subsidiaries; primary activities; third-party and intra-group revenues; profits; cash taxes paid; taxes accrued; an explanation regarding the difference between taxes accrued and the tax due, if the statutory tax rate was applied to profit/loss before tax; number of employees; and tangible assets. This data is already reported to the Internal Revenue Service (IRS) for the large filers identified in this Fact Sheet,¹ meaning that compliance with these requirements will represent a negligible additional cost to reporting MNEs.

Why the SEC and Why Now?

PCbCR Is No Longer a Matter of “If”, but “When and How”: The U.S. is now behind key jurisdictions in implementing PCbCR, which could create greater information asymmetry in U.S. markets and confusion among U.S. MNE filers.

- Last December, the [EU](#) formally adopted requirements for PCbCR for large multinationals with medium or large “undertakings” based on assets, revenues, and employees in the EU, regardless of location of headquarters. Under these rules, certain U.S. MNEs will be required to report limited PCbCR information regarding EU and “black” or “grey” listed jurisdiction operations for periods beginning after summer 2024.
- This year, [Australia released a proposal](#) that is likely to be quickly implemented into law, which will require full PCbCR for large MNEs with sufficient Australian contacts. Under these rules, certain U.S. MNEs are likely to be required to report full PCbCR information for periods beginning after summer 2023.

Meanwhile, a [growing number](#) of global MNEs are voluntarily filing PCbCR information, including under the GRI reporting standard, to promote greater trust with their investors and regulators, and to highlight sustainable governance practices and earnings results. In the U.S., [Hess Corporation](#) and [Newmont Mining](#) are the first filers to adopt these standards.

¹ This includes U.S. MNEs with annual revenues greater than or equal to \$850 million. See Treas. Reg. § 1.6038-4.

Unfortunately, voluntary standards by their voluntary nature fail to result in symmetrical information across marketplaces at the expense of the MNEs voluntarily filing and the investors and stakeholders relying on this information to understand comparative risks. Piecemeal shareholder proposals seeking this information from MNEs are also an inefficient way to address information asymmetries.

Competing mandatory and voluntary international standards should push the SEC to act now to avoid perpetuating information asymmetries in U.S. markets regarding the international practices of U.S. filers and to minimize compliance headaches for the filing MNEs.²

The SEC Already Has Clear Authority to Require PCbCR: Under sections 12(b) and 13(b) of the Securities Exchange Act of 1934, the SEC has broad rule-making authority to require public disclosure of accounting, tax and other information from public filers taking into consideration the public interest and the protection of investors.³ However, based on current rules promulgated by the SEC, MNEs publicly filing in the United States often only disclose all of their offshore tax obligations in a single aggregated “international tax bucket.” This is not adequate for the protection of investors; further, it entirely ignores the public interest in the international operations and tax practices of MNEs. Therefore, the SEC should act to implement PCbCR now based on its current authority.⁴

Why Do Investors Need this Information?

Investors Need This Information to Assess Risk: As FACT recently detailed in its report, [A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting](#), corporate tax represents up to one-third of pre-tax earnings. It is a critical variable for financial analysts modeling risk to more efficiently allocate capital; yet, it is a black box. As tax authorities and lawmakers around the world ramp up enforcement and reform policies to crack down on international tax avoidance, investors increasingly face unknown risk. Consider:

- In November 2020, the U.S. Tax Court ruled that Coca-Cola used profit-shifting to underpay \$3.3 billion in taxes from 2007 through 2009. Correcting these transfer pricing practices may result in the company facing a possible [\\$13 billion](#) in additional tax liability through 2021.
- In June 2022, [McDonald's](#) agreed to pay French tax authorities \$1.3 billion to settle allegations regarding McDonald's transfer-pricing practices moving French profits into Luxembourg.
- Apple was fined a staggering \$14.2 billion by the European Commission in 2016 for using Irish tax breaks found illegal under EU law. A court overruled the Commission, which then [appealed](#) in September 2020.
- In [October 2021](#), 137 jurisdictions, including the U.S. agreed on a two-pillar framework to implement a global minimum corporate tax equal to an effective rate of 15%. Jurisdictions like the [United Kingdom](#) and several key [EU nations](#) are moving to advance these reforms, which do not require the total participation of all jurisdictions to create the effective minimum tax. Without PCbCR, investors will be unable to model the impact of reforms on individual stock prices, which FACT estimates could cost U.S. MNEs up an additional \$44.25 billion in annual increased tax costs regardless of U.S. implementation.

² Although the Financial Accounting Standards Board ([FASB](#)), whom the SEC relies on as an independent body to create U.S. generally accepted accounting principles, is reconsidering greater disaggregation of tax information, the SEC should not be deterred from acting to promote PCbCR. While exciting, the FASB proposals still miss key information necessary to highlight tax and geopolitical risks, and create a second partial (and third overall) PCbCR standard for U.S. filing MNEs to comply with, versus simply creating a fulsome PCbCR reporting requirement based on data already filed with the IRS.

³ 15 U.S.C. §§ 78l(b)(1)(A), (J), (K), (L); 78m(a)(1).

⁴ In June of 2021, the U.S. House of Representatives passed the [Disclosure of Tax Havens and Offshoring Act](#) (H.R. 3007), which would have directed the SEC to act on PCbCR and which shows Congressional acknowledgement of the SEC's role in furthering this policy; however, the SEC does not need any additional authority to act.

Not surprisingly, shareholders seeing the need for this information have begun pressing MNEs to act and file PCbCR now. In 2022 alone:

1. 21% of independent [Amazon](#) shareholders voted to push the tech behemoth to file PCbCR in line with GRI standards. This came after investors with [\\$3.6 trillion](#) in AUM pushed the SEC to allow the vote after Amazon challenged the proposal; the SEC sided with investors.
2. The following U.S. MNEs have active, open shareholder resolutions calling for PCbCR – [Microsoft](#), [Cisco](#), [Exxon](#), [Chevron](#), and [Conoco](#).

PCbCR will allow investors to identify tax and geopolitical risks and more efficiently allocate capital, reducing market volatility in the long run.

Why Should U.S. MNEs Support SEC Action?

Facing Competing Standards, MNEs should Want to Highlight True Competitive Advantages: MNEs can leverage these disclosures as a competitive advantage to attract investors. With the introduction of competing international standards in the EU and Australia requiring PCbCR for certain U.S. MNEs, MNEs should be urging the SEC to act as a means to better demonstrate to investors and other users of financial statements sustainable profit practices (versus competitive advantages based on tax planning).

- Because large U.S. MNEs already file underlying data needed to report PCbCR with the IRS, compliance costs are minimal for PCbCR; however, these may be increased by [competing international standards](#). Instead, by requiring full PCbCR in line with best practices, the SEC will avoid potentially costly compliance analysis that is needed based on patchwork approaches.
- Voluntary filers, like [Shell](#), are recognizing that PCbCR is an opportunity to show true competitive advantage based on sustainable profits (versus gimmicky tax strategies). The SEC should enable investors to assess and allocate capital based on true competition.

Why else is this Information Useful?

Individual taxpayers and small businesses will benefit from this data, as it will deter the abuse of tax havens: When MNEs use accounting tricks to shift profits to tax havens, taxpayers – including individuals and small businesses – pick up the bill. Transparency will dissuade image-conscious corporations from abusing tax havens.

Lawmakers need this information to close loopholes: Relying on public pressure to curb tax dodging is unsustainable. Tax law must change to enable governments around the world to raise sustainable revenue streams in a way that will support stable financial markets and sustainable economic growth going forward, including in light of challenges like climate change and persistent global inequities. Yet secrecy hinders the debate, as was demonstrated by the recent OECD global minimum tax process. This data could also be used to advance knowledge and public policy analysis in other fields than tax.

Developing countries need this information to be public to access it: An international OECD agreement is in place for tax authorities to collect and exchange this information among themselves. Yet most developing countries are effectively shut out of the system. Developing countries rely proportionally more on corporate tax and face enormous budget needs. A recent IMF analysis showed [only 3 LMICs](#) have access to this information.

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