FACTCOALITION
Financial Accountability & Corporate Transparency

January 17, 2024

The Honorable Sheldon Whitehouse
Chairman
Committee on the Budget
U.S. Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Budget
U.S. Senate
Washington, DC 20510

Re: Hearing titled, "The Great Tax Escape: Closing Corporate Loopholes that Reward Offshoring Jobs and Profits"

Dear Chairman Whitehouse and Ranking Member Grassley,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, we appreciate the opportunity to comment on your hearing titled, "The Great Tax Escape: Closing Corporate Loopholes that Reward Offshoring Jobs and Profits." The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to combat the harmful impacts of corrupt financial practices.[1]

International tax dodging by large companies has enormous fiscal and economic costs. According to estimates from international economic experts, globally, companies shifted $1 trillion in profits to tax havens in 2022.[2] This results in huge sums of unpaid taxes annually: more than $100 billion in the United States alone (as of 2017), according to an analysis by former Treasury official and scholar Kimberly Clausing.[3] When large companies dodge taxes by using subsidiaries in low-tax countries, they push the tax burden on American small businesses and individual taxpayers.[4]

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[1] The FACT Coalition, "About Us," https://thefactcoalition.org/about-us/coalition-members-and-supporters
[2] EU Tax Observatory, *Global Tax Evasion Report 2024*, https://www.taxobservatory.eu/publication/global-tax-evasion-report-2024.
[3] Kimberly Clausing (2020), *How Big is Profit Shifting?*, https://ssrn.com/abstract=3503091. Kimberly Clausing (2016), *The Effect of Profit Shifting on the Corporate Tax Base in the United States and Beyond*, National Tax Journal, https://doi.org/10.17310/ntj.2016.4.09.
[4] *Polling by Small Business Majority in 2017 shows that the majority of small businesses want a fair tax system rather than tax cuts. Per the poll's findings, "7 in 10 small business owners feel that they are somewhat or greatly harmed when big corporations use loopholes to avoid taxes. This is especially significant as 85% of small business owners believe that the current tax code unfairly benefits large corporations over small businesses."* Small Business Majority, "Small Business Owners Want Fair Tax System Over Tax Cuts," October 16, 2017, https://smallbusinessmajority.org/our-research/taxes-budget-economy/small-business-owners-want-fair-tax-system-over-tax-cuts.

No Tax Breaks for Outsourcing Act

Congress must act to close international tax loopholes. We join sixty other organizations in supporting the No Tax Breaks for Outsourcing Act (**S. 357**), which would end harmful incentives to shift corporate profits as well as real operations – American jobs and investment – offshore. This legislation would raise an estimated $770.5 billion over the 10-year budget window. Attached is our group letter in support of this legislation, joined by 61 organizations.

Disclosure of Tax Havens and Offshoring Act

Many of these international corporate tax practices are enabled by financial secrecy. Globally, there has been progress in addressing this problem, particularly in Europe and Australia.[5] Congress should pass the Disclosure of Tax Havens and Offshoring Act (**S. 638**), which requires the Securities and Exchange Commission to implement public country-by-country reporting (CbCR) for public companies. In addition to informing investors, making this information public would discourage the most egregious instances of tax dodging. Endorsed by 66 investors representing nearly $3 trillion in assets under management and by 97 civil society organizations, this legislation passed the House last Congress.[6] Attached is a fact-sheet on the legislation.

Thank you for your time. If you have any questions, you can contact Zorka Milin (zmilin@thefactcoalition.org).

Sincerely,

Ian Gary
Executive Director

Erica Hanichak
Government Affairs Director

Zorka Milin
Policy Director

[5] The FACT Coalition, "International Corporate Tax Transparency Update: September 2023," https://thefactcoalition.org/wp-content/uploads/2023/09/Tax-Transparency-Update_-September-2023.pdf
[6] The FACT Coalition, "House Takes Historic Step in Advancing Corporate Tax Transparency," June 2021, https://thefactcoalition.org/house-takes-historic-step-in-advancing-corporate-tax-transparency.

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Annex 1

[Letter to Congress in support of the No Tax Breaks for Outsourcing Act]

November 9, 2023

Re: No Tax Breaks for Outsourcing Act (H.R. 884 / S. 357)

Dear Member of Congress,

We, the 61 undersigned organizations write to express our support for the No Tax Breaks for Outsourcing Act (H.R. 884 / S. 357), which would eliminate harmful incentives to shift corporate profits as well as real operations – American jobs and investment – offshore. The bill would ensure that U.S. multinational corporations pay at least the U.S. statutory tax rate (currently 21 percent) on their income in every country where they operate. **We ask you to co-sponsor this vitally needed pro-labor legislation.**

The global race to the bottom on taxes has drained government coffers, hollowed out our public health and social services, and given rise to levels of economic inequality not seen since the Gilded Age. The No Tax Breaks for Outsourcing Act would help to end this race to the bottom by aligning the U.S. with the historic international agreement on a global minimum tax that was led by the United States, and is already being implemented by our allies in the European Union, United Kingdom, Japan, South Korea and other countries. Crucially, the tax on foreign profits would apply on a country-by-country basis, to stop companies from dodging taxes by using subsidiaries in low-tax countries and pushing the tax burden on American small businesses and individual taxpayers.

Current U.S. tax law results in losses of revenue that should be funding critical public investments in healthcare, education, infrastructure, and other priorities. Moreover, the current law offers incentives for multinational corporations, including big pharmaceutical companies like Pfizer, to continue to shift their profits and production abroad. The current 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.** 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 No Tax Breaks for Outsourcing Act would provide a simple, straightforward fix to one of the costliest problems created by the Tax Cuts and Jobs Act and bolster President Biden's corporate tax agenda. It would level the playing field for small and wholly domestic businesses by eliminating the deep discount that multinational companies get for shifting profits offshore and outsourcing jobs. 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.

The legislation would also close the corporate inversion loophole, which allows companies to avoid paying U.S. taxes by pretending to be a foreign company on paper. The bill would prevent an American corporation from using a merger with a foreign company to claim that it is foreign for tax purposes if it continues to be managed and controlled in the United States, or if a majority of the U.S. company's shareholders own the resulting company after the merger. Additionally, the legislation would curb the biggest incentive for companies to invert by limiting the practice of earnings stripping, in which intercompany loans are used to shift profits out of the United States into low-tax subsidiaries.

Economists have calculated that the No Tax Breaks for Outsourcing Act would raise an estimated $770.5 billion over the 10-year budget window. Preventing U.S. domiciled multinational companies from avoiding their fair share of taxes would support much-needed public investment in America's families and workers. Corporate taxes are levied on profitable, not unprofitable, businesses. And the investments new revenues could underwrite – from infrastructure to healthcare to child tax credits – would have a stimulative effect on the economy. Returning a measure of fairness to our nation's tax code in this fashion would support a strong and equitable recovery for all.

We strongly encourage you to co-sponsor the No Tax Breaks for Outsourcing Act in order to make our tax system fairer, raise critically needed revenue, support U.S. workers, and encourage job creation here in America.

Thank you for taking our views into account. If you have questions, please contact Zorka Milin at zmilin@thefactcoalition.org.

Sincerely,

AfricaFocus Notes

American Family Voices

American Federation of Government Employees (AFGE)

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

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

Americans for Democratic Action (ADA)

Americans for Tax Fairness

Campaign for America's Future

Center for Economic and Social Rights (CESR)

Center for Popular Democracy

Coalition on Human Needs

Communications Workers of America

Community Change

Crude Accountability

Daily Kos

Financial Accountability and Corporate Transparency (FACT) Coalition

Friends of the Earth U.S.

Fund for Constitutional Government

Global Alliance for Tax Justice

Global Financial Integrity

Greenpeace USA

Institute for Policy Studies-Program on Inequality

Institute on Taxation and Economic Policy (ITEP)

Interfaith Center on Corporate Responsibility (ICCR)

International Association of Machinists and Aerospace Workers

International Campaign for Responsible Technology

International Federation of Professional and Technical Engineers (IFPTE)

International Rights Advocates

IUE-CWA

Jubilee USA Network

Liberty Shared

Main Street Alliance

Missionary Oblates

MomsRising

National Education Association

National Employment Law Project

National Organization for Women

NETWORK Lobby for Catholic Social Justice

New Rules for Global Finance

Oxfam America

Patriotic Millionaires

Public Citizen

Responsible Wealth

Rights CoLab

RootsAction.org

Service Employees International Union (SEIU)

Small Business Majority

Sierra Club

Sisters of Saint Francis of Philadelphia

Strong Economy For All Coalition

Take on Wall Street

Tax Justice Network

Teamsters

UFCW International Union

Union Veterans Council, AFL-CIO

United Auto Workers

United Church of Christ, Justice and Local Church Ministries

United for a Fair Economy

United Steelworkers (USW)

US-Africa Bridge Building Project

Working Partnerships USA

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Annex 2

FACT Sheet on the Disclosure of Tax Havens and Offshoring Act

FACTCOALITION
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Catching Corporate Tax Dodgers and Informing Investors: The Case for Public Country-by-Country Reporting

As concern with the national debt has reached new heights among lawmakers and the public, so too has interest in making sure that the nation's largest corporations pay their fair share of taxes. Meanwhile, investors across the nation are wondering how new tax regimes and enforcement efforts, both at home and across the globe, will affect the companies in their portfolios. **In order to improve tax enforcement and arm investors with the information they need to allocate their funds wisely, it is time to make large multinational corporations publicly report on their global tax practices**.

The Disclosure of Tax Havens and Offshoring Act (S.638)[1] requires large multinational corporations to begin public country-by-country reporting of tax and operational data to the Securities and Exchange Commission (SEC). All data required to be reported by these entities is already reported to the Internal Revenue Service (IRS), meaning that compliance with these new requirements will represent a negligible additional cost to reporting companies.

Why Public Country-by-Country Reporting?

- **Public country-by-country reporting is advancing around the world**. The European Union[2] has already adopted measures to promote tax transparency, and **Australia[3] is expected to pass the world's first comprehensive public reporting regime this year**, which would require large multinationals doing business in the country to provide details on their global operations. As both plans will capture certain U.S.-headquartered multinationals under their respective reporting requirements, the Disclosure of Tax Havens and Offshoring Act would also serve to clarify and standardize reporting requirements for affected companies.

- Investors need this information to assess risk, and they know it. **Investors with over $10 trillion[4] in assets under management have endorsed public country-by-country reporting**, and many

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[1] Required information includes, but is not limited to: a list of subsidiaries, main activity, revenue, profit, tax, number of employees, stated capital, accumulated earnings, and tangible assets.

[2] The FACT Coalition, "European Action on Multinational Tax Transparency Requirements Underscores Need for Strong U.S. Action," June 2, 2021. https://thefactcoalition.org/european-action-on-multinational-tax-transparency-requirements-underscores-need-for-strong-u-s-action/

[3] Department of the Treasury, "Public country-by-country reporting," April 6, 2023. https://treasury.gov.au/consultation/c2023-383896.

[4] Oxfam America, "Methodological note and list of investors, $10 trillion AUM in support of pCbCR," May 2023. https://www.oxfamamerica.org/press/press-releases/exxonmobil-chevron-and-conocophillips-shareholders-must-vote-to-ditch-secretive-tax-practices/

major U.S.-based multinationals have recently faced shareholder resolutions demanding greater tax transparency, including Amazon, Microsoft, Cisco, ExxonMobile, and Chevron. Foremost among investors' concerns are the potential ramifications of the OECD's global 15% minimum tax, which is currently being adopted by the European Union and other key jurisdictions.

- **Eye-popping enforcement fines against big multinationals engaged in tax dodging are only becoming more frequent**:
  - In 2022, McDonald's agreed to pay French tax authorities **$1.3 billion**[5] to settle allegations regarding transfer-pricing practices moving French profits into Luxembourg.
  - In 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 **$14 billion**[6] in additional tax liability.
  - Apple was fined a staggering **$14.2 billion**[7] by the European Commission in 2016 for using Irish tax breaks found illegal under EU law. While the EU's highest court reviews the decision, Microsoft and Facebook are separately under IRS investigations that could lead to billions of dollars in fines.

- **Lawmakers need this information to close loopholes**: Relying on public pressure to curb tax dodging is unsustainable. Tax law must change, but secrecy hinders the debate. The real impact of new offshore taxes, such as the Global Intangible Low Income Tax (GILTI) and Corporate Alternative Minimum Tax (CAMT) introduced in 2017 and 2022, respectively, can be difficult to gauge without public access to country-by-country data.

- **Developing countries need this information to raise more tax revenue**: Though many tax authorities collect and exchange this information among themselves, most developing countries are effectively shut out of the system. Developing countries rely proportionally more on corporate tax to pay off accumulated debt, build critical infrastructure, and fund public services.

- **We must restore public trust**: Repeated scandals like the Panama and Paradise Papers have shown the public in no uncertain terms that current tax law favors wealthy and powerful corporations over America's small businesses and ordinary taxpayers.

For additional information, contact Erica Hanichak at ehanichak@thefactcoalition.org

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[5] Associated Press, "McDonald's to pay France $1.3 billion in tax fraud case," June 16, 2022. https://apnews.com/article/politics-paris-france-cb44909c2c59aa9e62817565b91336a0

[6] Securities and Exchange Commission, "Form 10-K, Commission File Number 001-02217, The Coca-Cola Company," February 21, 2023. https://www.sec.gov/Archives/edgar/data/21344/000002134423000011/ko-20221231.htm

[7] Reuters, "EU seeks top court backing in $14 billion tax fight against Apple," May 23, 2023. https://www.reuters.com/technology/eu-seeks-top-court-backing-14-billion-tax-fight-against-apple-2023-05-23/