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VIA E-mail (director@fasb.org) and U.S. Mail

Technical Director
File Reference No. 2016-270
Financial Accounting Standards Board
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RE: Proposed Accounting Standards Update, Income Taxes (Topic 740)

On July 26, 2016, the Financial Accounting Standards Board released an exposure draft of proposed changes in disclosure requirements for income taxes (Topic 740) (Proposed Update). The Proposed Update is part of the FASB's larger disclosure framework project, which has the overall objective of improving the effectiveness of GAAP disclosures by facilitating clear communication that is most important to financial statement users. When deciding upon the disclosure updates to include in the Proposed Update, the FASB applied a cost benefit analysis. As a result, "[t]he Board anticipates that entities would incur moderate costs as a result of the amendments in this proposed Update while providing users with beneficial information that would justify those costs." Proposed Update at 2. Tax Executives Institute (TEI or the Institute) commends the FASB for undertaking the disclosure framework project and is pleased to submit the following comments on the Proposed Update.

TEI Background

TEI is the preeminent worldwide association of corporate tax executives. Our nearly 7,000 members are accountants, attorneys, and other business professionals employed by approximately 3,000 of the leading companies in North and South America, Europe, and Asia. TEI represents a cross-section of the business community and is dedicated to the development and implementation of sound tax policy and tax accounting principles, as well as to promoting the uniform and equitable enforcement of the tax laws. The Institute is proud of its record of working with congressional committees, government agencies, and other policy-making bodies, including the Securities and Exchange Commission, the Financial Accounting Foundation, and the FASB on tax and tax accounting matters. These efforts inure to the

mutual benefit of the government, business taxpayers, preparers and users of financial statements, and ultimately the public at large.

TEI members are responsible for conducting the tax affairs of their companies, ensuring their compliance with the tax laws, and preparing financial disclosures of tax related matters. Most of the companies represented by our members issue financial statements that are governed by the FASB's pronouncements, and, of those, most are SEC registrants. For companies governed by other accounting standards, such as International Financial Reporting Standards, the FASB's work is also critical because FASB pronouncements are often referenced by other accounting standards' boards. In addition, they are subject to scrutiny by the IRS and various other agencies in the United States and foreign jurisdictions on a continual basis.

As a professional association of in-house tax executives, TEI offers a unique perspective. Its members work for companies involved in a wide variety of industries, and thus, their collective perspectives are broad-based and not tied to any particular special interest group. Further, TEI members are responsible for both the tax affairs of their employers and the reporting of tax information in their employers' financial statements. Thus, they are well-versed in the complexities of the tax laws, as well as the financial accounting rules. We believe the diversity, background, and professional training of TEI's members place us in a uniquely qualified position from which to comment on the FASB's proposed accounting standards updates. Along with the government and the investing public, our members have the most at stake in trying to craft a financial reporting system that fairly presents the results of company operations and is as administrable and cost-effective as possible.

General Views on the Proposed Update

The accounting standards for income taxes are complex. In many instances, the accounting complexity is an inevitable byproduct of complexities in the tax law. Reviewing these standards is an important and expected role of the FASB, and we appreciate the FASB's efforts, in particular, its focus on ensuring that financial statement disclosures are clear and usable to investors and readers of financial statements and that the benefits of providing the disclosures justify the costs. TEI members are growing increasingly concerned with the FASB's efforts to expand existing and add new financial statement disclosures. Required tax disclosures are becoming confusingly detailed, subjective, and duplicative, and we question whether the benefits of entities providing the expanded information justify the costs. We are puzzled by many of the additions and adjustments in the Proposed Update because they appear inconsistent with the FASB's initiative for simplification and may not result in improved clarity or usability for users of financial statements. To the contrary, we believe there is a real risk that changes in the Proposed Update will create information overload and confusion for readers leading to inaccurate conclusions.

Accordingly, we urge the FASB to reconsider whether the individual changes in the Proposed Update truly achieve the overarching cost-benefit and decision-usefulness objectives or simply add low value detail and confusion to the tax footnotes at a high cost to preparers. We hope our comments below will be useful in this exercise.

Comments on the Proposed Update's Main Provisions

In the following paragraphs, we provide comments on the main provisions in the Proposed Update, which are listed and summarized on pages 3-4 of the exposure draft.

Proposed Additional Disclosures for All Entities

1. Description of an enacted change in tax law that is probable to have an effect on the reporting entity in a future period

We believe the information required by this proposed change is inherently forward-looking and inappropriate for a tax footnote. Additionally, because the proposed disclosure would not include quantitative estimates of impact (presumably because the actual amounts of impact would be highly subjective), this information would provide limited value to financial statement users.

A requirement to provide a description of an enacted change in tax law that is *probable* to have an effect in a *future period* brings yet another subjective determination of future events into financial statement disclosures. This type of nonverifiable, future-oriented information causes us concern because actual future events or conditions may be materially different than the internal projection. The proposed disclosure would require a company to rely on internal projections and assumptions, and significant judgment would be required to understand the effect of tax law on future periods. Both the reporting company's judgment and internal projections would be difficult to objectively verify and would be difficult for the company's external auditors to review and opine upon. Indeed, similar facts may yield different forecasted effects and different outcomes for different companies. Thus, we fear the inherently subjective disclosures required by the proposed change would confuse users of financial statements, resulting in more harm than good. Furthermore, the sheer volume of changes in tax law in the many jurisdictions in which global companies operate would have a significant impact on the volume of the existing income tax footnote disclosures. On balance, we believe the uncertainties and costs associated with this proposed disclosure exceed the benefits the disclosed information may provide to users of financial statements.

Similar disclosures are already required for public companies under SEC Regulation S-K Item 503(c) Risk Factors. The inherently forward-looking information required by the proposed change is more appropriately disclosed as a business risk and not in the tax footnotes where it

may be given equal weight by users as other footnote disclosures that are based on actual results and not forecasted outcomes.

If the FASB chooses to implement this change, we encourage the FASB to provide additional clarity on what is meant by “an enacted change in tax law.” The disclosure requirement, if adopted, should be limited to statutory laws enacted by country’s legislature and should not cover regulatory laws and rulings promulgated by administrative agencies or case law developed by judges. We believe this is the intent of the Proposed Update, but additional clarity is needed to resolve doubt. The proposed disclosure requirement should also have a reasonable temporal limitation. We would recommend limiting the disclosure to statutory laws enacted by country’s legislature within the current year.

2. Income (or loss) from continuing operations before income tax expense (or benefit) disaggregated between domestic and foreign

Pretax income and loss is already disaggregated between foreign and domestic in the financial statements. Further disclosure of the components of income would be duplicative and would raise the costs of preparing financial disclosures with little apparent benefit to users.

3. Income tax expense (or benefit) from continuing operations disaggregated between domestic and foreign

Like the proposed change above related to pre-tax income, we believe this proposed disclosure would be duplicative and broadly not useful given this disclosure already exists in the financials.

4. Income taxes paid disaggregated between domestic and foreign, and the amount of income taxes paid to any country that is significant to total income taxes paid

ASC 230-10-50-2 currently requires companies to disclose total income taxes paid during the period. The proposed disclosure requirement would expand this disclosure, requiring income taxes paid to be disaggregated between domestic and foreign and also requiring disclosure of the amount of income taxes paid to any country that is significant to the total.

TEI opposes these additional disclosures because the costs and potential issues relating to them far outweigh any possible benefit the disclosures may provide to users of financial statements. The stakeholder view presented in BC23 summarizes the concerns we have with this disclosure—i.e.:

1. One taxing authority using information about a different taxing authority to collect additional tax revenue,

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,
3. The perception that an entity is operating in a low-tax country for tax advantages when such benefits are generally only part of the business considerations for locating operations in such country, and
4. Potentially compromising the ability of one country to negotiate with other countries.

These points are significant and the proposed disclosure could have a material impact on a company's income tax expense, as well as its relationship with taxing authorities and the public at large. Taxes are exceedingly complex, and the disclosure of this disaggregated information will very likely be misused and misinterpreted.

Furthermore, disclosure of income taxes paid, rather than accrued, may not be meaningful, because tax payments are driven by a number of factors (e.g., estimated tax payment requirements, the timing of tax audit settlements, the timing of customer remittances and taxes withheld) that bear no direct relationship to the current year's income. Given these concerns, we recommend that the FASB withdraw the proposed modification. If the FASB chooses to include disaggregated disclosures, we recommend that such information be based upon taxes accrued rather than paid and that individual country information not be required.

5. An explanation of circumstances that caused a change in assertion about the indefinite reinvestment of undistributed foreign earnings and the corresponding amount of those earnings

TEI encourages the FASB not to adopt this proposal because it raises complications that exceed any benefit to financial statement users. The proposed explanation would be of limited usefulness to readers because it would be based on anticipated events that may never occur. Further, changes in circumstances concerning future events are inherently subjective and may be misinterpreted by readers of the financial statements. For example, a change in assertion could result from management's decision to preserve the flexibility to distribute earnings from a jurisdiction in a future year and the underlying basis for the distribution may or may not come to fruition for a variety of business and market-based reasons.

Although it would have limited usefulness, the proposed disclosure could have severe consequences for reporting entities. In this regard, the nature of the change in an assertion could be strategic in nature and confidential. Such would be the case in the example of an intention to repatriate earnings or not in anticipation of a strategic plan for acquisition or expansion that is not publicly announced or even certain. Such a disclosure could result in a loss of competitive advantage. Requiring disclosure of strategic, confidential information

would have unintended consequences that outweigh any benefits of disclosing such information to the public in financial statements.

6. The aggregate of cash, cash equivalents and marketable securities held by foreign subsidiaries

ASC 820 currently requires “quantitative disclosures about the fair value measurements separately for each class of assets”—i.e., cash, cash equivalents, and marketable securities. Further, under ASC 740-30-50-2, whenever a deferred tax liability is not recognized because of the exceptions to comprehensive recognition of deferred taxes related to subsidiaries, the cumulative amount of the temporary difference must be disclosed.

The proposed update would require the aggregate of cash, cash equivalents, and marketable securities held by foreign subsidiaries to be disclosed. According to BC34, “Users said that the disclosure of cash associated with indefinitely reinvested foreign earnings could be beneficial in making predictions about whether and when foreign earnings will be remitted and, if so, predicting the potential tax consequences. In terms of this analysis, cash equivalents, marketable securities, and loans also could be meaningful.”

The existing disclosure requirements under ASC 740 and 820 mentioned above combine to provide investors with enough information to understand the nature and amounts of foreign vs. domestic investments. The proposed update would potentially require disclosure of cash, cash equivalents, and marketable securities held by all foreign subsidiaries whether or not taxes have been previously accrued or paid. TEI respectfully disagrees with the view expressed above, which appears to be based on speculation without demonstrated correlations. Decisions concerning indefinitely reinvested foreign earnings are based on range of complex factors. Thus, the risk that the proposed disclosure would lead to confusion and incorrect predictions is far greater than any legitimate benefit the information could provide to users of financial statements.

Proposed Additional Disclosures for Public Business Entities

1. Within the reconciliation of the total amounts of unrecognized tax benefits at the beginning and end of the period, settlements using existing deferred tax assets separate from those that have been or will be settled in cash

This proposed reconciliation raises complications that exceed benefits available to financial statement users. In some cases, a company might alter its filing position on a tax return to utilize a different attribute or have attributes increased or decreased due to audit results. Thus, a requirement to trace a settlement to a single attribute (e.g., a net operating loss) suggests a level of granularity in forecasting that might not be practicable.

2. The line items in the statement of financial position in which the unrecognized tax benefits are presented and the related amounts of such unrecognized tax benefits

We believe the proposed amendment does not result in more effective, decision-useful information. While not costly to implement, this change does not improve the clarity or usefulness of the financial statements. Specifically, the proposed amendment to “Example 30: Disclosure Relating to Uncertainty in Income Taxes” includes a separate line item for “unrecognized tax benefits not presented on the statement of financial position.” It is not apparent and we do not understand what type of items would be presented on this line. If this proposed change is adopted, we recommend that the line item “unrecognized tax benefits not presented on the statement of financial position” be clarified or removed.

3. The amount and explanation of the valuation allowance recognized and/or released during the reporting period

Under existing ASC 740-10-50-2, an entity is required to disclose the total valuation allowance recognized for deferred tax assets determined in paragraph 740-10-30-5(e). Given the linkage of the valuation allowance to the statement of financial position, investors may readily determine the change in valuation allowance without the need for any additional disclosure.

Evaluating the need for and amount of a valuation allowance for deferred tax assets requires significant judgment and extensive analysis of all the positive and negative evidence available to determine whether all or some portion of the deferred tax assets will not be realized. For this reason, we believe any explanation would be lengthy and potentially confusing to investors. The costs of compliance, complexity, and high potential for misinterpretation outweigh the benefits this discloser may provide to financial statement users. Accordingly, we urge the FASB not to adopt this proposed addition.

4. The total amount of unrecognized tax benefits that offsets the deferred tax assets for carryforwards

This information is essentially captured above in proposed addition 2. As stated above, we do not believe the change proposed in item 2 above is warranted, and therefore, this disclosure is similarly unnecessary and should also be eliminated. However, if proposed addition 2 is adopted, we believe investors would already be able to discern the potential impact unrecognized tax benefits could have on the amount of deferred tax assets and liabilities in the statement of financial position, making this disclosure unnecessary.

Other miscellaneous changes

Elimination of the future-oriented requirement to disclose the nature and estimate of the range of the reasonably possible change in the unrecognized tax benefits balance

We applaud the FASB's effort to simplify the financial statements and eliminate forward-looking and subjective disclosure. We agree with the proposed elimination.

Modify the existing rate reconciliation requirement for public entities to be consistent with Regulation S-X 210.4-08(h) and require disclosure to explain the changes in those reconciling items from year to year

While we understand this requirement is designed to add disclosure to the footnote that is already provided in the Management Discussion and Analysis section of financial statements, we question the need for duplicative disclosure and believe the current disclosure by management is sufficient. Duplication of information in financial statements unnecessarily increases compliance costs and raises the possibility of confusion by users.

Require public business entities to disclose 1) amounts of federal, state, and foreign carryforwards (not tax-effected) by the time period of expiration for each of the first five years after the reporting date and a total for any remaining years, and 2) the amounts of deferred tax assets (tax effected) before valuation and disaggregate by time period of expiration for each of the first five years after the reporting date and a total for remaining years

Currently under ASC 740-10-50-3, an entity must disclose the amount and expiration dates of operating loss and tax credit carryforwards. Further, under ASC 740-10-50-6, a public entity must disclose the approximate tax effect of each type of temporary difference and carryforward that gives rise to a significant portion of deferred tax liabilities and deferred tax assets (before allocation of valuation allowances).

The proposed disclosure requirements would potentially increase the existing income tax footnote disclosures by two additional tables. These tables would include amounts of federal, state, and foreign carryforwards, pre-tax and tax effected, by time period of expiration for each of the first five years after the reporting date and a total for any remaining years. We believe this information may be confusing and may not add any measurable benefit to users of financial statements because 1) the tax rate applied may vary (e.g., the worldwide effective tax rate, the local effective tax rate, or the jurisdiction's tax rate may be applied), 2) the actual usage or generation of credits could change as a result of decisions in a later return filing, and 3) amounts may be misleading for users who attempt to extrapolate future carryforward generation or use based on historical trends that fluctuate with changes in state law and apportionment factors.

Accordingly, we suggest removing the proposal to disclose pretax amounts and retaining the existing requirement to disclose the net amounts of carryforwards in total with the year of expiration.

Require entities other than public business entities to disclose the total amounts of federal, state, and foreign carryforwards (not tax-effected) and their expiration dates

The views expressed immediately above for public business entities apply to non-public business entities as well. Thus, we encourage the FASB not to adopt this proposed change.

Disclose the description of a legally enforceable agreement with a government, including the duration of the agreement and the commitments made with the government under that agreement and the amount of benefit that reduces or may reduce its income tax burden

Under proposed paragraph 740-10-50-23, “[a]n entity shall disclose the description of a legally enforceable agreement with a government, including the duration of the agreement and the commitments made with the government under that agreement and the amount of benefit that reduces, or may reduce, its income tax burden.” TEI submitted a comment letter dated February 10, 2016 in response to the FASB’s separate project related to disclosures on government assistance, i.e., exposure draft on Topic 832, Proposed Accounting Standards Update - Disclosures by Business Entities about Government Assistance. Those comments, to the extent they relate to income taxes, apply equally to this proposed change. In short, TEI disagrees with the notion that a common standard for disclosing all government assistance arrangements is necessary or appropriate and believes the detriments the proposed addition would cause far outweigh possible improvements to financial information provided to users. We also believe it is inappropriate as a policy matter to require the disclosure of agreements that contain confidentiality clauses or are otherwise considered confidential income tax return information protected from disclosure under local laws such as section 6103 of the Internal Revenue Code. We therefore respectfully request that the added disclosure be withdrawn from consideration.

If the FASB moves forward with this proposed addition, we recommend revising the language in proposed paragraph 740-10-50-23 to reduce unnecessary ambiguity. We understand the proposed paragraph only requires disclosure of income tax agreements. To make this clear, we recommend adding the double-underlined text to the first sentence of the paragraph: “An entity shall disclose the description of a legally enforceable agreement with a government that reduces, or may reduce, its income tax burden, including” We also suggest clarifying that the disclosure requirement does not extend to agreements that are not traditionally considered to be “government assistance.” For example, companies routinely enter into settlement agreements with tax authorities to resolve uncertain tax issues that arise during the course of

tax audits. Such settlements may occur as part of an initial examination or audit, or as part of an administrative appeal or judicial litigation process. The settlement of an uncertain tax issue often occurs because the parties have a difference of opinion involving how and/or whether a statute, regulation, or other type of tax law applies to a particular set of facts. While settlement agreements may be “legally enforceable” and may also reduce an income tax burden, we do not believe they fall within the intended scope of the proposed disclosure requirement. The same is true for interpretive rulings where a tax administrator issues a ruling stating how the income tax laws of a jurisdiction apply to a fact pattern and for advance pricing agreements (APAs) in which a government agrees to the transfer prices of intercompany sales. To avoid confusion, the Proposed Update should state that the disclosure requirement does not extend to interpretive rulings and other agreements resolving uncertain tax issues.

Clarification is also needed in the circumstance where an entity meets eligibility requirements that are not broadly available and do not require specific agreement between the entity and the government. Some provisions of tax law may be crafted in such a way that only one or very few taxpayers will be eligible yet no specific agreement is required.

Conclusion

TEI appreciates the opportunity to provide these comments. Unfortunately, in this instance, we find the volume of change and additions to be cumbersome and in many cases not helpful or useful and potentially creating information overload for the reader. We fully support the FASB’s efforts to clarify, simplify, and improve the income tax disclosures required under ASC 740, but respectfully submit that many of the changes in the Proposed Update fail to advance tax disclosures to that end. We look forward to commenting on future proposals and welcome any opportunity to discuss these views with members of the FASB.

These comments were prepared under the aegis of TEI’s Financial Reporting Committee whose chair is Eric Johnson. Should you have any questions about the comments, please do not hesitate to contact Mr. Johnson at (925) 965-4536 or eric.johnson@ros.com or Patrick Evans of the Institute’s legal staff at (202) 638-5601 or pevans@tei.org.

Respectfully submitted,

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