



## INTERFAITH CENTER ON CORPORATE RESPONSIBILITY

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June 16, 2017

Investor Advisory Committee  
c/o Alicia A. Posta  
Executive Director, FASB Advisory Groups  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

Electronic delivery to: [aaposta@fasb.org](mailto:aaposta@fasb.org)

Cc: Susan Cospers, Technical Director, FASB

Re: Comments on the Exposure Draft for the Proposed Accounting Standards Update to Income Taxes

Dear members of the Investor Advisory Committee:

On behalf of the investor members of the Interfaith Center on Corporate Responsibility (ICCR), we write to urge the Financial Accounting Standards Board (FASB) to strengthen and adopt the proposal to update standards for income tax disclosure.

ICCR is a 46 year-old, pioneer coalition of over 300 organizational investors representing faith-based communities, socially responsible asset managers, labor unions, and others who engage corporations on the environmental and social impacts of their operations. ICCR members hold more than \$200 billion in assets under management.

As investors, we are increasingly concerned about the risks associated with aggressive tax planning by multinational companies. The adoption of these tax strategies has been growing in recent years and now accounts for trillions of dollars in profits booked offshore. The profits are often booked to tax havens and, because of the U.S. policy of deferral, these companies have hundreds of billions of dollars in tax liability.

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Overall, U.S. companies hold an estimated \$2.6 trillion offshore on which they owe an estimated \$767 billion in taxes.<sup>i</sup> The current disclosure regime does not provide the necessary information to adequately assess investment risk.

In search of revenues, a number of countries have stepped up their enforcement of current laws and passed new laws to rein in the profit shifting that has allowed for aggressive tax planning. This trend increases the risk of exposure of hidden tax liabilities.

Additionally, profit shifting and transfer pricing create inefficiencies and questionable long-term financial benefit that is increasingly necessary to evaluate when investing. As was discovered in a 2013 Senate investigation, many of these companies route their profits through tax havens but put their money in U.S. Treasury Notes,<sup>ii</sup> safe but low yielding investments. Are those tax strategies helping or hindering long-term company growth? It is impossible to make judgements or properly assess without basic information about where profits are held and taxes are paid.

These concerns are not theoretical. The real life examples are well documented. The European Commission ruled Apple owes \$14 billion in back taxes.<sup>iii</sup> Starbucks and Fiat Chrysler similarly received state aid illegal under EU law,<sup>iv</sup> and Amazon and McDonald's are under investigation.<sup>v</sup> The Paris offices of Google were raided last year by French tax authorities.<sup>vi</sup> Facebook and others are facing investigations by the IRS.<sup>vii</sup> The sale of Dell ran into delays and lawsuits after a \$26 billion difference between valuation experts surfaced – based in large part on competing estimates of offshore tax liability.<sup>viii</sup> A number of companies have warned that tax enforcement is likely to hit earnings,<sup>ix</sup> and Goldman Sachs has advised investors to focus on companies that pay high effective tax rates to minimize exposure to offshore tax liabilities.<sup>x</sup> These are just a few of the most publicized examples.

One concern raised by those questioning increased disclosure is that public disclosures will generate a public outcry for more accountable tax policy. We believe that planned transparency is safer and less disruptive than future leaks or investigations that lead to reputational damage.

Another concern is the cost of compliance. It is true that additional disclosures come with a cost. In this instance, the cost is mitigated by regulatory changes already adopted or moving forward. The multilateral Base Erosion and Profit Shifting (BEPS) initiative has moved countries to require companies to file certain information country by country – the US filing is with the IRS.<sup>xi</sup> And the European Commission has a proposal that is moving through their process for public disclosure.<sup>xii</sup> In short, the companies and tax authorities already have the information. We, the investors, are the only constituency that does not have the information, even though we are the ones who put our money at risk.

We therefore welcome FASB's initiative to improve tax disclosures. We support the proposal to require disclosure of income (loss) before income tax expense disaggregated between domestic and foreign, income tax expense (benefit) disaggregated between domestic and foreign, and income taxes paid disaggregated between domestic and foreign. However, we believe that FASB could require further disclosure in four areas:

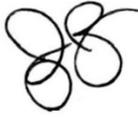
1. The proposal calls for disclosure of countries where companies are paying significant tax. As the above demonstrates, the risk is where there is substantial income but little tax paid. It is important to clearly define, when evaluating disclosure standards, the purpose

for including specific information in the financial statements. It is unclear to us what the value of the high tax country information would be in the absence of information on income and revenues in low or no tax countries. At a minimum, that must be changed.

2. We encourage you to delete the word “significant” when defining which countries to report. If a company has committed the resources to invest in a country, then it is worth noting in the financial statements. The history of opacity does not provide us with confidence that we will be given a full picture unless all countries are listed. Even after the Senate investigation found that Apple had \$30 billion in stateless income and the SEC wrote letters asking for more information, the company declined to provide any additional data. They held to their assertion that there is no concern regarding their tax liability.<sup>xiii</sup> That turned out to be false but was not disclosed at that time because there were no standards in place.
3. We encourage you to require all companies with permanently reinvested earnings to estimate the amount they would owe on these earnings if they were repatriated. The current rule allows companies to avoid disclosure if they find it “not practicable”. While it may not be practicable to foresee the tax liability at some point in the future when the company might decide to repatriate earnings, the standard could require disclosure of the tax that would have been owed if all permanently reinvested earnings had been repatriated in the current year at the current rate.
4. While income and tax paid is a helpful step, there is more information provided to the IRS. The additional information was included because it was necessary to understanding whether a company is pushing the limits of aggressive tax planning. Investors assessing a company’s tax strategy and the associated risk can only do so with adequate information. The specific information, disaggregated by country, that is important to disclose to investors includes:
  - profit or loss before taxes;
  - income tax accrued for the current year;
  - revenues from unrelated parties, related parties, and in total;
  - income tax paid (on a cash basis);
  - effective tax rate;
  - stated capital;
  - accumulated earnings;
  - number of employees; and
  - tangible assets other than cash or cash equivalents

We thank you for your consideration of our comments. If you have any questions or would like additional information, please contact me at 212-870-2294, or [jzinner@iccr.org](mailto:jzinner@iccr.org).

Sincerely,



Josh Zinner,  
Chief Executive Officer  
Interfaith Center on Corporate Accountability

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<sup>i</sup> Institute on Taxation and Economic Policy (March 28, 2017) “Fortune 500 Companies Hold a Record \$2.6 Trillion Offshore” <https://itep.org/fortune-500-companies-hold-a-record-26-trillion-offshore/>

<sup>ii</sup>

<sup>iii</sup> European Commission (August 30, 2016) “State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion” [http://europa.eu/rapid/press-release\\_IP-16-2923\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2923_en.htm)

<sup>iv</sup> European Commission (October 21, 2015) “Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules” [http://europa.eu/rapid/press-release\\_IP-15-5880\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5880_en.htm)

<sup>v</sup> European Commission (December 3, 2015) “State aid: Commission opens formal investigation into Luxembourg’s tax treatment of McDonald’s” [http://europa.eu/rapid/press-release\\_IP-15-6221\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6221_en.htm)

European Commission (October 7, 2014) “State aid: Commission investigates transfer pricing arrangements on corporate taxation of Amazon in Luxembourg” [http://europa.eu/rapid/press-release\\_IP-14-1105\\_en.htm](http://europa.eu/rapid/press-release_IP-14-1105_en.htm)

<sup>vi</sup> Reuters (May 24, 2016) “Investigators raid Google Paris HQ in tax evasion inquiry”

<sup>vii</sup> CNN (July 29, 2016) “Facebook could owe \$5 billion in taxes” <http://money.cnn.com/2016/07/29/technology/facebook-irs-penalty/>

<sup>viii</sup>

<sup>ix</sup> Financial Times (March 28, 2016) “US companies warn tax avoidance crackdown will hit earnings” <https://www.ft.com/content/b6f04f72-f12c-11e5-aff5-19b4e253664a>

<sup>x</sup> Politico (May 23, 2016) “Goldman on how to invest in 2016” <http://www.politico.com/tipsheets/morning-money/2016/05/goldman-on-how-to-invest-2016-214424>

<sup>xi</sup> Internal Revenue Service “Country-by-Country Reporting Guidance” <https://www.irs.gov/businesses/country-by-country-reporting-guidance>

<sup>xii</sup> European Parliament (January 12, 2017) “Public country-by-country reporting by multinational enterprises”, Briefing: EU Legislation in Progress

[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/595867/EPRS\\_BRI\(2017\)595867\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/595867/EPRS_BRI(2017)595867_EN.pdf)

<sup>xiii</sup>