May 31, 2019

Sent via email to director@fasb.org

Technical Director
File Reference No. 2016-270
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 2019-500: Revised Exposure Draft with Proposed Changes to the Disclosure Requirements for Income Taxes

Dear Director Kalanick and Members of the Board:

For decades, the Financial Accounting Standards Board (FASB) has led the world in corporate accounting accuracy and transparency, helping to build strong U.S. capital markets by providing investors and other financial statement users with useful information critical to making informed decisions. But today, despite three years of effort, FASB's revised exposure draft proposing changes to U.S. financial reporting requirements for corporate income tax disclosures[1] fails to provide the accounting leadership normally associated with the United States and instead lags behind a worldwide movement mandating greater corporate tax transparency. In so doing, the revised FASB rule fails investors, U.S. capital markets, and the public.

I write this comment as a longtime user of financial statements and one who admires FASB's accounting acuity. For nearly 30 years, I worked for U.S. Senator Carl Levin as a congressional investigator, including 15 years at the U.S. Senate Permanent Subcommittee on Investigations (PSI), where I spent more than a decade as his staff director and chief counsel. Because of Senator Levin's interest in tax matters, PSI conducted multiple investigations focused on corporate tax practices.[2] In all of our tax investigations, we routinely reviewed the financial

[1] FASB Exposure Draft: *Proposed Accounting Standards Update (Revised) on Income Taxes (Topic 740), Disclosure Framework—Changes to the Disclosure Requirements for Income Taxes* (7/26/2016) (hereinafter "revised exposure draft" or "revised proposal"), http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176168335332&acceptedDisclaimer=true.

[2] See, e.g., the following hearing records and staff reports released by the U.S. Senate Permanent Subcommittee on Investigations: "Abuse of Structured Financial Products: Misusing Basket Options to Avoid Taxes and Leverage Limits," S. Hrg. 113-422 (7/22/2014); "Caterpillar's Offshore Tax Strategy," S. Hrg. 113-408 (4/1/2014); "Offshore Profit Shifting and the U.S. Tax Code – Part 2 (Apple Inc.)," S. Hrg. 113-90 (5/21/2013); "Offshore Profit Shifting and the U.S. Tax Code – Part 1 (Microsoft and Hewlett-Packard)," S. Hrg. 112-781 (9/20/2012); "Repatriating Offshore Funds: 2004 Tax Windfall for Select Multinationals," S.Prt. 112-27 (10/11/2011); "Dividend Tax Abuse: How Offshore Entities Dodge Taxes on U.S. Stock Dividends," S. Hrg. 110-778 (9/11/2008); "Executive Stock Options: Should the Internal Revenue Service and Stockholders Be Given Different Information," S. Hrg. 110-141 (6/5/2007); "U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals," S. Hrg. 108-473 (11/18 and 20/2003); and "Fishtail, Bacchus, Sundance, and Slapshot: Four Enron Transactions Funded and Facilitated by U.S. Financial Institutions," S.Prt. 107-82 (1/2/2003).

reports of the businesses being examined, but invariably found them to be of limited use, forcing us to use questionnaires, document requests, and interviews to break through the secrecy often surrounding the tax practices of U.S. multinational corporations. Our information-gathering process typically took six months to a year to obtain the data needed to form an accurate understanding of how the business handled its tax obligations. This intensive effort imposed business and taxpayer costs that could have been avoided or reduced if the tax disclosures in corporate filings were more transparent and useful.

The revised proposal makes it clear that FASB is not concerned with those types of corporate and taxpayer costs, or with the needs of policymakers, investigators, or law enforcement seeking to understand corporate tax practices.[3] Instead, the exposure draft has indicated that its only focus is the needs of investors, creditors, and other capital market participants.[4] But even with that narrow focus, the importance of corporate tax data has become apparent. Comments submitted by a wide spectrum of investment professionals, financial analysts, nonprofit organizations, and FASB's own Investor Advisory Committee have shown that tax data plays a vital role in such activities as valuing corporations, identifying tax risks, evaluating sustainable corporate practices, and making informed investment decisions.

In addition, during its deliberations, FASB has received extensive evidence of a sustained global movement towards increased corporate tax disclosures, especially of tax information broken down by individual country. A recent report by the Financial Accountability and Corporate Transparency (FACT) Coalition, for example, recounts a "growing chorus of individuals and organizations speaking out on the value of tax transparency and, in particular, the public country-by-country reporting (CBCR) of certain financial information for multinational companies."[5] Evidence of this international corporate tax transparency movement, cited in the FACT report and elsewhere, includes the following.

- In 2009, the Extractives Industry Transparency Initiative (EITI), a voluntary international initiative whose members now include 52 governments, many corporations in the

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[3] The revised exposure draft, ¶ BC6, at 21, states: "The objective of financial reporting is to provide information that is useful to present and potential investors, creditors, donors, and other capital market participants in making rational investment, credit, and similar resource allocation decisions." The exposure draft does not acknowledge any other type of financial report user, even though policymakers, investigators, and law enforcement are well known, longstanding users of financial reports subject to Generally Accepted Accounting Principles (GAAP) and routinely utilize those reports when working to develop policy, investigate problems, or enforce the law.

[4] Id. The exposure draft narrowly focuses on investors even though FASB's mission statement explicitly requires FASB to provide useful information to, not only investors, but also "other users of financial reports":

> The collective mission of the FASB, the Governmental Accounting Standards Board (GASB) and the FAF [Financial Accounting Foundation] is to establish and improve financial accounting and reporting standards to provide useful information to investors and other users of financial reports and educate stakeholders on how to most effectively understand and implement those standards.

FASB Mission Statement, reprinted in "About the FASB," https://www.fasb.org/facts/index.shtml.

[5] *Trending Toward Transparency: The Rise of Public Country-by-Country Reporting* (4/2019), FACT Coalition, at 1, https://thefactcoalition.org/trending-toward-transparency?utm_medium=policy-analysis%2Freports%2Ffact-reports. See also *Tax transparency and country-by-country reporting: BEPS and beyond* (6/2016), PricewaterhouseCoopers, https://www.pwc.com/gx/en/tax/tax-policy-administration/assets/tax-transparency-and-country-by-country-reporting.pdf.

extractive industries, nonprofit organizations, and others, began collecting from the participating corporations annual public disclosures of certain financial and tax information, including corporate tax payments on a country-by-country basis.

- In 2013, the European Union (EU) issued an EU Accounting Directive requiring large firms active in the extractive industries to publicly disclose on a country-by-country basis certain financial and tax information. Corporate disclosures under the EU Accounting Directive have now taken place for nearly five years.

- In 2013, the European Union issued EU Capital Requirements Directive IV (CRD IV) requiring large banks and other financial institutions within the European Economic Area to publicly disclose on a country-by-country basis certain financial and tax information. Corporate disclosures under CRD IV have now been occurring for several years.

- In 2014, Canada enacted the Extractive Sector Transparency Measures Act (ESTMA) which requires large Canadian companies in the extractive industries to publicly disclose on a country-by-country basis certain financial and tax information. ESTMA disclosures have also taken place for years.

- In 2014, of more than 1,300 CEOs surveyed by PricewaterhouseCoopers (PwC) in countries around the world, 59% indicated that multinational corporations should be required to disclose basic financial information, such as revenue, taxes paid, and number of employees, on a country-by-country basis.

- In 2015, in response to a growing consensus by its member countries that multinational corporations were engaged in improper tax dodging, the Organization for Economic Cooperation and Development (OECD) issued an action plan under its Base Erosion and Profit Shifting (BEPS) Project which, among other matters, set standards requiring large multinational corporations to disclose certain financial and tax information on a country-by-country basis to their home tax authorities. Over the next few years, most OECD member countries adopted the recommended corporate tax disclosure standards, including the United States.[6] In 2019, tax authorities in 76 countries, including the United States, officially exchanged financial and tax disclosures provided by their largest multinational corporations in accordance with the OECD reporting standards.[7]

- In 2016, moving beyond the requirements of the OECD BEPS Project, the United Kingdom enacted a law giving its tax agency, HM Revenue & Customs, authority to compel UK multinational corporations, upon request, to provide public disclosure of

[6] See "Country-by-Country Reporting," final rule issued by the U.S. Department of the Treasury, 81 Fed. Reg. 126 (6/30/2016), at 42482. U.S. multinational corporations began filing country-by-country reports with the IRS in 2018, providing country-by-country financial and tax data for 2017.
[7] See, e.g., "BEPS Action 13: Country implementation summary" (5/23/2019), KPMG, https://home.kpmg/content/dam/kpmg/xx/pdf/2019/05/tnf-beps-action-13-may23-2019.pdf.

certain financial and tax information on a country-by-country basis. In a similar vein, the European Parliament and European Commission have approved different versions of a proposal to require public disclosure of country-by-country information by a large range of multinational corporations doing business in Europe; those EU-wide proposals are now awaiting action by the European Union Council.

- In 2016, the Certified Financial Analysts' Institute, which represents 137,000 analysts in 150 countries, submitted comments to FASB verifying the importance of corporate income tax disclosures to investors.

- In 2017, the United Nations (UN) Principles for Responsible Investment, a network of more than 1,800 signatories representing investors with more than $70 trillion in assets under management, issued a set of principles recommending that multinational corporations provide more information about their tax policies, strategies, and risk appetite, discuss their tax policymaking process and how they integrate tax practices with their larger business and sustainability strategies; and provide public information on certain financial and tax data on a country-by-country basis.[8]

- In 2017, Norges Bank Investment Management, which manages the Norwegian sovereign wealth fund with $915 billion in assets, announced a new set of expectations for investing in multinational corporations, stating that "multinational enterprises should publish country-by-country breakdowns of how and where their business model generates economic value, where that value is taxed and the amount of tax paid as a result." It also declared: "public country-by-country reporting is a core element of transparent corporate tax disclosure."[9] In 2018, Norges Bank Investment Management reported that it had sent its expectations document to 500 of the largest companies in its portfolio.[10]

- In 2019, the International Monetary Fund strengthened its Fiscal Transparency Code by adding a section that, among other matters, describes public disclosure by extractive industries of project-level payments to governments as the international norm.[11] A 2019 IMF paper on corporate tax also referred favorably to country-by-country reporting, stating: "CbC reporting may give tax administrations a better understanding of the operations and structure of the [multinational enterprises] with which they deal."[12]

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[8] See PRI publications at https://www.unpri.org/esg-issues/governance-issues/tax-avoidance.
[9] "Tax and Transparency: Expectations towards Companies," Norges Bank Investment Management (2017), at 3-4, https://www.nbim.no/contentassets/29f69f7ae81449f9adc88a32aa3de8c8/expectations-document---tax-and-transparency---norges-bank-investment-management.pdf.
[10] "Expectation document on tax and transparency," Norges Bank Investment Management (1/24/2018), at 3, https://www.nbim.no/contentassets/a899e6145192491fa7b75712db533862/20180124-mof-expectations-tax-and-transparency.pdf.
[11] "Fiscal Transparency Initiative: Integration of Natural Resource Management Issues," (1/2019), International Monetary Fund, at 7, https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparencyinitiative-integration-of-natural-resource-management-issues.
[12] "IMF Policy Paper: Corporate Taxation in the Global Economy" (3/10/2019), International Monetary Fund, at 54,

- In 2019, the Global Reporting Initiative, a standards-setting body followed on a voluntary basis by approximately 13,000 entities around the world, solicited comments on a proposed set of corporate tax transparency standards that would require adherents to disclose information about their tax strategies, principles, and risk tolerance; process for developing tax policy, managing tax risk, and tracking internal compliance; and certain financial and tax data on a country-by-country basis.[13] Efforts to finalize the GRI corporate tax transparency standards are now underway.

- Over time, some multinational corporations, including Vodafone, Unilever, BHP Billiton, and Rio Tinto, have begun making available to the public, in varying degrees and on a voluntary basis, certain country-by-country financial and tax information. Some of those corporate disclosures have now been taking place for years.

Together, these developments document a ten-year global movement towards increased corporate tax transparency and country-by-country tax reporting. FASB's revised exposure draft fails, however, to acknowledge this international movement or its ongoing impact on financial reporting standards for multinational corporations. Instead, the revised exposure draft makes clear FASB will not be joining the international chorus favoring country-by-country corporate tax reporting.

FASB's Faulty Analysis. The revised exposure draft offers three reasons for deciding against requiring country-by-country corporate tax disclosures, none of which is persuasive.

First, the exposure draft asserts, without citing any research or empirical evidence, that the costs of providing the information could outweigh the benefits.[14] The exposure draft fails to acknowledge or address existing evidence that country-by-country corporate tax reporting in Canada, Europe, and elsewhere has not incurred disproportionate costs. A 2014 report on the economic consequences of public country-by-country reporting by financial institutions, for example, commissioned by the European Commission, did not find the reporting costs outweighed the benefits. In fact, PwC, which conducted the analysis, concluded:

> "At this stage, the public country-by-country reporting of information under Article 89 of Directive 2013/36/EU is not expected to have a significant negative economic impact, in particular on competitiveness, investment, credit availability or the stability of the financial system. On the contrary, it seems that there could be some limited positive impact."[15]

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https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/03/08/Corporate-Taxation-in-the-Global-Economy-46650.

[13] "Disclosures on Tax and Payments to Government," Global Sustainability Standards Board, https://www.globalreporting.org/standards/work-program-and-standards-review/disclosures-on-tax-and-payments-to-government/.

[14] See revised exposure draft, ¶ BC24, at 26.

[15] *General Assessment of Potential Economic Consequences of CBCR Under CRD IV* (9/2014), Directorate-General for the Internal Market and Services, European Commission, https://publications.europa.eu/en/publication-detail/-/publication/0a178acc-d60a-11e5-a4b5-01aa75ed71a1/language-en.

During subsequent European Parliamentary hearings, top executives from HSBC and Barclays, two banks already filing public country-by-country reports, voiced support for extending public country-by-country reporting to multinational corporations in all EU sectors.[16] Neither bank criticized the costs of compliance or claimed the costs outweighed the benefits of country-by-country reporting.

Second, the revised exposure draft claims that the resulting tax information could be misleading,[17] even though years of country-by-country corporate tax disclosures in Canada, Europe, and elsewhere have not produced that type of problem. Again, the exposure draft fails to cite any research or empirical evidence supporting its assertion.

Finally, the revised exposure draft indicates that FASB decided against requiring country-by-country disclosures, because country-level disclosures could lead to:

> "a. One taxing authority using information about a different taxing authority to collect additional tax revenue
>
> b. 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
>
> c. The perception that an entity is operating in a low-tax country for tax advantages when that is not the case
>
> d. Potentially compromising the ability of one country to negotiate with other countries."[18]

Those factors – raising tax collection concerns, potential tax enforcement problems, and possible conflicts among tax authorities – center on tax policy issues that extend beyond FASB's area of expertise. In addition, the exposure draft does not cite any research or other evidence to justify its pessimistic analysis; in fact, its analysis runs counter to U.S. participation in the OECD BEPS Project which, in 2015, determined that country-level disclosures would clarify the facts, strengthen tax enforcement, and improve relationships among tax authorities, and which has proceeded to oversee the exchange of country-by-country corporate tax data among 76 countries without the negative consequences projected in the revised exposure draft. At a minimum, the exposure draft should reconsider its analysis in light of ongoing positive experiences in Canada, Europe, the United States, and elsewhere related to the usefulness of corporate country-by-country financial and tax disclosures.

Two Tax Disclosure Improvements. Despite its shortcomings, the revised exposure draft would improve existing corporate tax disclosures in two key respects. First, it would require multinational corporations to provide information in their financial reports on both the income taxes they've paid and the income tax expenses (or benefits) they've incurred during the covered period. Both disclosures contribute to understanding a corporation's tax status, since they capture different types of tax events that often unfold on different timelines. Both types of

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[16] See "Banks and public CBCR," (3/8/2016), Eurodad, https://youtu.be/a1lJCKT4ikI.
[17] Id. at ¶ BC23, at 25, and ¶ BC24, at 26.
[18] Id. at ¶ BC25, at 26.

information are routinely tracked by a corporation's tax division, are already disclosed by publicly traded corporations under Securities and Exchange Commission (SEC) reporting requirements, and, thus, could be reported in a corporation's financial statements with minimal additional expense.

Second, the exposure draft would require the two types of information to be provided on a disaggregated basis, broken down among a corporation's federal, state, and foreign taxes. Over time, that disaggregated information would help investors and others better analyze the corporation's U.S. tax status including, for example, its U.S. tax benefits, liabilities, and tax enforcement risk. Claims in some comment letters that disaggregation would be too difficult or costly are belied by the track record of corporations around the world providing country-by-country disclosures with minimal expense, by longstanding SEC reporting requirements requiring disaggregated data, and by the common sense proposition that corporations already routinely track the tax payments they make to specific governments as well as the taxes imposed (or tax benefits provided) by those same governments.

One further improvement that could be made to the exposure draft would be to apply the same disaggregation approach to a multinational corporation's unrecognized tax benefits, requiring those disclosures to be broken down by federal, state, and foreign tax benefits. Disaggregating the data on uncertain tax benefits, like the disaggregated data already mandated by the revised exposure draft, would provide investors and other users of corporate financial reports with extremely useful information while imposing minimal additional cost on the reporting corporations.

The tax disclosure improvements in the revised exposure draft represent an advance over the status quo, better align GAAP with SEC requirements, and should be included in any final FASB accounting standard, even though they still fall far short of the country-by-country financial reporting that now represents best practice for corporate tax disclosures.

Rejection of Non-U.S. Country-Specific Disclosures. In contrast to the proposed improvements, it is disappointing that the revised exposure draft drops, rather than modifies or expands, an initial exposure draft provision that would have required tax disclosures for any non-U.S. country where a corporation pays a significant amount of tax. The exposure draft now shies away from requiring tax disclosures related to any specific country other than the United States.

That approach not only fails to align the United States with the country-by-country corporate tax disclosure regimes gaining ground globally, it adopts a constricted, U.S.-centric approach that confines GAAP tax disclosures to essentially two categories – domestic and foreign. That U.S.-centric approach fails to recognize that investors analyzing multinational corporations want to know – not just how much of a corporation's income or tax liabilities are attributed to the United States versus the rest of the world – but also exactly where, outside of the United States, a corporation has chosen to do business, report income, and pay tax.

The fundamental problem is that the proposed approach fails to acknowledge that corporate taxes are always assessed by individual countries. Each country has substantially different tax frameworks, enforcement strategies, and penalties. But the revised proposal would allow corporations to lump together all of their non-U.S. tax data, without breaking out information for any specific non-U.S. jurisdiction. The resulting aggregate totals would be of limited utility to investors and analysts (also policymakers, investigators, law enforcement, and the public), since the combined data would render it virtually impossible to understand, not only the precise countries where a corporation is doing business, but also how much tax it is paying in those countries, how much of its income is being attributed to tax havens, and the extent to which the corporation may be dodging tax obligations and risking tax enforcement actions in particular jurisdictions. Analysts would likely be unable to determine even the number of non-U.S. countries where the corporation is operating. Combined tax data would also make it extremely difficult, if not impossible, to calculate reliable effective tax rates for specific non-U.S. countries or to determine the extent to which a corporation may be utilizing tax havens.

Still another problem is that, in contrast to the UN and GRI approaches cited earlier, the revised FASB proposal fails to require any additional information about a corporation's tax principles, risk tolerance, or policy-making process. Disclosures related to a corporation's general tax principles, risk appetite, and process for making specific tax decisions would help investors and others analyze and compare corporate tax practices and make more informed decisions. Increasing those disclosures would not only augment the usefulness of the corporate tax information available to investors and other users of financial reports, but also move the United States into closer alignment with best financial reporting practices.

The revised exposure draft, as currently presented, is behind the times and out of step with the rest of the world when it comes to corporate tax reporting. It represents a missed opportunity by FASB to show leadership in the area of corporate tax disclosures or better reflect the consensus reached by the United States and other members of the international community that large multinational corporations ought to report basic financial and tax information on a country-by-country basis. It is not too late to strengthen the draft and provide the leadership that FASB has shown in the past to elevate U.S. accounting standards and ensure useful financial reporting. This letter respectfully requests that FASB consider that course of action.

Thank you for this opportunity to comment on the revised exposure draft to improve corporate tax reporting in U.S. financial statements.

Sincerely,

Elise J. Bean
Former Staff Director and Chief Counsel
of the U.S. Senate Permanent Subcommittee on Investigations