September 22, 2021

Richard R. Jones, FASB Chair
Hillary H. Salo, Technical Director
File Reference No. 2021-004 FASB, 401, Merritt 7,
PO Box 5116 Norwalk, CT 06856-5116

Re: File Reference No. 2021-004: Prioritize Disaggregation of Jurisdiction-by-Jurisdiction Tax Reporting for Public Business Entities

Dear Chair Jones, Director Salo, and Members of the Board,

We appreciate the opportunity to offer these comments on the Financial Accounting Standards Board's (FASB) future standard-setting agenda (File Reference No. 2021-004). The following letter responds to questions 1, 2, 5, and 6 of the Board's invitation to comment.

Question 1: The Financial Accountability and Corporate Transparency (FACT) Coalition is non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices. The FACT Coalition supports increased transparency in public tax reporting by multinational corporations to allow investors to appropriately assess and manage risks for their investments and to the broader economy and to allow policy makers and the public to understand corporate tax practice and to ensure that corporate tax law works as intended.

Question 2: We urge FASB to prioritize the disaggregation of country-by-country income tax reporting information in notes to the financial statements for public business entities. We are encouraged by FASB's recognition that existing income tax disclosures do not provide sufficient detail to assess global tax risk or to analyze the effects of international corporate tax laws and taxpayer responses to these laws. Enhancements to the notes of financial statements, including requiring public disclosure of operating results and the amounts of cash taxes paid by country (or other tax jurisdiction, which we will simply refer to herein as public country-by-country reporting) and disaggregation of the types of taxes paid, such as the global intangible low-taxed income (GILTI) tax and the base erosion and anti-abuse tax (BEAT), can help investors gain greater insight into income tax risks. This information, along with other information set forth in greater detail below, are decision-critical information for various stakeholders and should be urgently considered in reproposing Accounting Standards Update to Income Taxes (740).

Question 5: For the reasons set forth above and below, we believe that FASB should urgently prioritize reproposing Accounting Standard Update to Income Taxes (740) to provide for the disaggregation of the income tax information set forth below in the notes to the financial statements.

Question 6: We urge FASB to make disaggregation of income tax disclosure on a country-by-country basis in the notes to the financial statements for public business entities, as detailed below, a top priority so that investors, policy makers, and the public can better understand a company's financial, reputational, and economic risks, gauge their level of risk tolerance, and make informed investment and public policy decisions.

1. The Disaggregation of Country-by-Country Income Tax Disclosure Should be a Top FASB Priority

Failing to conform to emerging uniform global standards for those who invest in U.S. companies will put investors in U.S. reporting companies and policy-makers at a competitive disadvantage. Starting at the beginning of 2021, the Global Reporting Initiative (GRI)implemented on a voluntary basis the first globally applicable public country-by-country reporting standards, and multinationals like Philips[1] and Newmont[2] are already complying with these standards to varying degrees (meriting reporting standardization). In June 2021, the European Union finalized a political deal to require a degree of public country-by-country reporting and final votes are scheduled in November.[3] On the heels of the European Union political deal, the U.S. House of Representatives passed the Disclosure of Tax Havens and Offshoring Act, included as Title V of the Corporate Governance Improvement and Investor Protection Act (H.R. 1187).[4] The Act requires multinational corporations registered with the Securities and Exchange (SEC) to disclose their taxes paid and other key financial information publicly on a country-by-country basis.

These events represent a clear global momentum to see public country-by-country reporting realized in the near term. However, the European Union agreement, which at present would have many loopholes and would largely limit public tax reporting to taxes paid in Europe and not require reporting on a globally disaggregated basis, demonstrates the risk of not having an organization like FASB lead on these types of changes.[5] FASB's mandate is clear, "to establish and improve financial accounting and reporting standards to provide decision-useful information to investors and other users of financial reports." Because the information suggested by this letter greatly improves the decision-useful information available to investors, policy-makers, and other public stakeholders at minimal additional compliance costs, we believe FASB should be leading these worldwide trends toward disaggregation of corporate income tax information on a country-by-country basis for public business entities. We would rather have FASB get

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[1] *See* Philips, 2020 ESG Performance, https://www.results.philips.com/publications/ar20#esg.
[2] *See* Newmont Mining, 2020 Sustainability Report, https://www.newmont.com/sustainability/sustainability-reporting/.
[3] 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/.
[4] Corporate Governance Improvement and Investor Protection Act, 117th Cong., H.R. 1187; Office of Sen. Chris Van Hollen, "Van Hollen Applauds House Passage of Legislation to Provide Transparency on Corporate Use of Tax Havens, Offshoring of Jobs," Jun. 16, 2021, https://www.vanhollen.senate.gov/news/press-releases/van-hollen-applauds-house-passage-of-legislation-to-provide-transparency-on-corporate-use-of-tax-havens-offshoring-of-jobs.
[5] Eurodad, "EU Fails to Introduce Real Public Country by Country Reporting," Jun. 1, 2021, https://www.eurodad.org/eu_fails_to_introduce_real_public_country_by_country_reporting.

these rules right this time to meet the emerging global disclosure trends, rather than have to go back at a later date and reopen this file.

2. There is a Pervasive Need to Disaggregate Country-by-Country Income Tax Disclosure as its Objectives are Essential to Decisions Around Allocating Capital

Sound capital allocation decisions require country-by-country information to properly assess the location of business activity and profits, as well as the potential presence and risks of aggressive tax strategies. This is particularly true in light of global efforts to deter tax evasion and profit-shifting, demonstrated by the *current* U.S. GILTI and the BEAT tax regimes (as well, as calls for reform to these regimes and ongoing OECD negotiations). Investors and analysts who make difficult decisions about where and how to invest across countries and regions are the primary users of financial statements, after all. FASB should be laser-focused on what the primary users (e.g., investors) of the financial statements actually need.

Income and tax information at the country-by-country level is what investors require to better understand a company's financial, reputational, and economic risks, gauge their level of risk tolerance, and make informed investment decisions. In other words, this is exactly the information that investors need to make allocation of capital decisions, demonstrating the urgent and pervasive need for this information.

Without adequate information, investors may be unaware that companies are taking significant financial tax risks that provide modest short-term benefits but create uncertainty and instability, ultimately affecting longer- term value. Consider Coca-Cola’s $3.3 billion U.S. tax assessment (which may implicate $12 billion in additional taxes owed through 2020) when the Tax Court upheld the IRS’s rejection of Coca-Cola’s problematic transfer-pricing practices,[6] Apple's $14.5 billion USD European tax assessment rejecting its claim that its three Irish subsidiaries could avoid declaring any tax residence,[7] Caterpillar's $2 billion U.S. tax assessment after the IRS invalidated its $55 million Swiss tax shelter,[8] and Chevron's $230 million USD fine after an Australian court ruled against the company's high-risk tax interpretations.[9] These and other examples of negative corporate tax avoidance rulings have led not only to negative financial consequences for specific corporations, but also to deepening public unrest and distrust of corporate tax practices. Country-by-country reporting could have alerted investors prior to the tax liability fallout for these companies of what now appears to be an overreliance on tax planning and other accounting

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[6] Coca-Cola, 2020 4th Qtr. Results, https://www.coca-colacompany.com/press-releases/coca-cola-reports-fourth-quarter-2020-results; Aysha Bagchi, “Coca-Cola Must Pay Bulk of $3.4 Billion Tax Bill, Court Says,” Bloomberg Tax (Nov. 18, 2020), https://news.bloombergtax.com/daily-tax-report/coca-cola-gets-mixed-court-decision-in-3-4-billion-irs-dispute.

[7] Pearl, Morris, "How Companies Like Apple Dodge Taxes and Their Own Investors," *The New York Times,* September 21, 2016, https://nvti.ms/2HLYgHG.

[8] Cordova, Elisabeth Butler, "Caterpillar's $2 billion tax fight with the IRS could change how US companies do business," *CNBC,* January 2, 2018, https://cnb.cx/2wuIR8j.

[9] Wells, Peter and Vanessa Houlder, "Chevron loses landmark tax case on transfer pricing," *Financial Times,* April 21, 2017, https://on.ft.com/2Wh0bNg.

measures that increased risk. If, in fact, risky tax strategies might play a role in the future financial troubles of a company, investors should have foresight into just how aggressive these tax avoidance strategies might be.

Transparency provided by the disaggregation of income tax information on a country-by-country basis for public business entities can also protect against reputational risk that directly impacts investment returns. When companies are required to be open and forthcoming, there is much less of a chance their tax information will spark a public backlash if it inadvertently becomes public. For example, leaked news of aggressive tax avoidance strategies has led to protests that can disrupt operations, create additional costs and require changes to tax capital structure.[10] By reducing risks of news-related scandals, unnecessary and costly diversions of company resources can be avoided.

To better assess and manage risk, investors need to know in which countries a company is operating and what are the company's top line financial commitments and tax arrangements. By requiring disaggregated country-by-country corporate tax disclosures for public business entities per the below, FASB will help identify countries that are facilitating corporate tax dodging and thereby expose tax risks currently hidden from investors.

3. Disaggregation of Income Tax Disclosure and Other Financial Report Users

We would further encourage FASB to prioritize disaggregation of the information requested in this letter in the notes to financial statements for public business entities to improve information available in the public-finance discourse in light of unprecedented global challenges in the fight against climate change, persistent social and economic inequities, and the global corporate tax race to the bottom.[11] As previously indicated, the information requested to be publicly disclosed by this letter is already typically required for taxpayers under OECD agreement via IRS Form 8975. It is important to note that, while this information is critical to aid the IRS and other tax authorities with enforcement, enforcement review does not necessarily implicate ensuring that tax laws work as intended.

Policy-makers and public citizens do not currently have access to the information that they need to ensure that our tax laws—or proposed reforms—work (or will work) as intended. This allows for increased instances of potentially misleading or even deceptive uses of the limited tax information that is currently available in public discourse, which can undermine effective policy and public trust.[12] FASB recognizes that

[10] Consider when Vodafone tax reporting strategies led to large-scale protests and changes to tax operating and reporting methods. *BBC News,* "Vodafone shops blockaded in tax protest," October 30, 2010. https://www.bbc.com/news/business-11658950.

[11] *See, e.g.,* Ian Gary and David Waskow, "Fair Tax Systems are Vital for Strong Climate Action," The Hill Opinion, Apr. 28, 2021, https://thehill.com/opinion/energy-environment/550787-fair-tax-systems-are-vital-for-strong-climate-action (highlighting the connection between the fights for climate action and ending the corporate tax race to the bottom).

[12] *See* Patrick Driessen, "EY's GILTI Study Flawed on Data and Tax Rates," Tax Notes Aug. 30, 2021, https://www.taxnotes.com/tax-notes-international/global-intangible-low-taxed-income-gilti/eys-gilti-study-flawed-data-and-

stakeholders other than investors use financial statement information. So too do other early adopters of tax transparency measurers such as Unilever, who began reporting a form of public country-by-country income tax information this year.[13] The disaggregation of country-by-country income tax information in the notes to the financial statements by public business entities can help to allow policy-makers and other stakeholders create better policy to promote a more sustainable and mutually beneficial relationship between public and corporate interests and to build public trust.

4. The Solution and Scope for Country-by-Country Income Tax Disclosure Demonstrate why its Benefits Far Outweigh the Minimal Costs of such Disclosure

For the reasons set forth above, the FACT Coalition supports urgently reproposing Accounting Standard Update to Income Taxes (740) to incorporate the standard being implemented by the Global Reporting Initiative or otherwise reported on IRS Form 8975.[14] This would require the disaggregation in the notes to the financial statements of the following information reported to investors (and other stakeholders, as applicable) on a country-by-country (or other tax-jurisdiction) level by public business entities:

- Number of entities;
- Names of resident entities;
- Primary activities of entities;
- Number of employees, and the basis of calculation of this number;
- Revenues from third-party sales;
- Revenues from intra-group transactions with other tax jurisdictions (with rules to avoid double-dividend or other potentially twice-counted revenues);
- Profit/loss before tax (with detail on any separately reporting loss-entities and/or other carry-over tax attributes that might have an annual impact on reported tax);
- Tangible assets other than cash and cash equivalents;
- Corporate income tax paid on a cash basis (and separately, any taxes withheld on payments received by applicable entities);
- Corporate income tax accrued on profit/loss (reflecting only operations in the relevant annual period and excluding deferred taxes or provisions for uncertain tax liabilities);
- Stated capital, except that stated capital of a permanent establishment must be reported in the tax jurisdiction of residence of the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes;
- Total accumulated earnings, except that accumulated earnings of a permanent establishment

tax-rates/2021/08/30/777bt ("The data EY uses to calculate average effective tax rates under today's law and for (its interpretation of) the Biden administration GILTI proposals described in the green book aren't up to the task.").

[13] See Unilever, "A Responsible Taxpayer," 2021, https://www.unilever.com/planet-and-society/responsible-business/responsible-taxpayer/ ("We think that providing user-friendly information about our corporate tax position to a broad range of stakeholders plays an important role in improving transparency and public trust.")

[14] See Treas. Reg. Sec. 1.6038-4; *Global Reporting Initiative,* "GRI 207: Tax 2019," https://www.globalreporting.org/search/?query=GRI+207.

must be reported by the legal entity of which it is a permanent establishment;

- Reasons for any difference between corporate tax accrued on profit/loss and:
    - o the tax due if the statutory tax rate is applied to profit/loss, and or the tax due if the statutory tax rate is applied to profit/loss before tax; and
- Significant tax incentives.

Many multinational companies, including those who are parented by U.S. entities, are already reporting this type of information to their home country tax authorities; others have been providing this type of information in public filings for years.[15] While the disclosures to tax authorities and in public filings may differ from compliance with GAAP, the raw data has already been compiled, which means GAAP-compliant disclosures would not comprise a significant new expense. We would also note that companies and, now, tax authorities have this information.

Royal Dutch Shell was one of the first large multinational companies to publicly disclose a form of country-by-country information in 2019. Shell's Executive Vice President, Taxation and Controller, recently testified in the European Parliament in favor of additional tax transparency, noting that its benefits far outweighed the de minimis additional costs when stating that:

> "When we first started considering the report, we thought through all the possible risks, downsides and unintended consequences. I can tell you now that in reality these concerns did not play out. In fact, being more transparent has strengthened trust in Shell, and it continues to strengthen our relationships with our customers, investors, policymakers, and others. I would encourage more companies to open their books and show their financial contributions to society. Because meeting society's expectations will earn them trust… and because more transparency can support the development of fair, stable and effective tax systems which are always important… but today perhaps more than ever."[16]

Further, the need for this information is even more pressing as the U.S. government and other governments around the world coordinate via the OECD to crack down on the global tax race to the bottom in a manner that could have real impacts on capital allocation (and strategic tax) decisions by firms.[17] The only stakeholders left in the dark are those putting their money at risk—to the investors who need FASB to follow its mandate and require reporting of this critical, low-cost and decision-useful information on an urgent and prioritized basis.

[15] Treas. Reg. Sec. 1.6038-4.

[16] Introductory Remarks by Alan McLean, Executive Vice President Taxation and Controller, Royal Dutch Shell plc at the hearing by the FISC Committee of the European Parliament, 9 September 2021 https://www.europarl.europa.eu/cmsdata/239248/Alan%20McLean%20Statement.pdf

[17] OECD, "General Tax Report To G20 Finance Ministers and Central Bank Governors," July 2021, https://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-july-2021.pdf.

Thank you for your consideration of these comments. The FACT Coalition would be happy to discuss these comments at your convenience. Please contact Ryan Gurule (rgurule@thefactcoalition.org) with any questions or concerns.

Respectfully,

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