



September 1, 2022

**To:** Director, International Tax Branch, Corporate and International Tax Division

**Submitted electronically** via MNETaxIntegrity@treasury.gov.au

**Re:** Consultation on Multinational Tax Integrity and Tax Transparency

Dear Director:

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, this letter responds to the invitation to comment on Part 3 of the consultation paper regarding Multinational Tax Integrity and Tax Transparency dated August 5, 2022.<sup>1</sup> This letter endorses the comments submitted by Pensions & Investment Research Consultants Ltd (PIRC), and adopts as its own PIRC's responses to Part 3, questions 8-20.

More specifically, this letter encourages the Australian Treasury (Treasury) to ensure enhanced tax transparency by multinational enterprises (MNEs) by:

1. **Mandating full public country-by-country reporting (PCbCR) regarding all jurisdictions where large MNEs (defined below) operate.**  
(Part 3 Questions: 1, 4, & 5)
2. **Defining reporting large MNEs to include any "significant global entity," as defined under Subdivision 960-U of the Income Tax Assessment Act 1997 (ITAA 1997).** (Questions: 2 & 3)
3. **Requiring PCbCR consistent with 207-4 (Country-by-country reporting) of the Global Reporting Initiative (GRI) 207 standard.** (Part 3 Questions: 6 & 7)

The FACT Coalition is a United States based, non-partisan alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global financial system that limits abusive tax avoidance and curbs the harmful impacts of corrupt

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<sup>1</sup> Treasury.gov.au, "Multinational Tax Integrity and Tax Transparency," <https://treasury.gov.au/consultation/c2022-297736>.

practices.<sup>2</sup> FACT is a leading voice for PCbCR<sup>3</sup> and has collaborated with policy-makers, investors, standard-setting bodies (including GRI), and international advocates to advance PCbCR best practices and other tax transparency measures globally. Most recently, FACT clearly laid out the investor case for PCbCR – as well as why partial PCbCR or tax disaggregation standards are not adequate – in our July 2022 report: “*A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting*,” attached as **Annex A** to this letter.<sup>4</sup>

The FACT Coalition welcomes this invitation to comment, which presents tax transparency reforms that would make Australia a global leader in implementing necessary policies to correct information asymmetries between MNEs, investors, policymakers, academics, civil society, and other potential users of PCbCR. By adopting FACT and PIRC recommendations, Treasury would resolve these information asymmetries in furtherance of Treasury’s goals to promote less aggressive and more sustainable MNE behaviors and encourage greater public trust in the tax system.

## **Introduction:**

### *The case for PCbCR in Australia*

The UN estimates that governments lose more than \$500 billion a year from MNE profit shifting – facilitated by the digitization of the global economy. In 2018 alone, Australia likely lost up to \$25 billion (or A\$35.8 billion) as a result of MNE profit shifting by both Australian and foreign-parented MNEs.<sup>5</sup> Coordinated efforts to curb global profit shifting and hold MNEs accountable for their global tax practices are necessary to build a more resilient global economy and further a more sustainable future.

As Treasury notes, to begin tackling the scourge of profit shifting, global tax authorities began collecting and exchanging country-by-country tax information for large MNEs pursuant to OECD Base Erosion and Profit Shifting (BEPS) Action Item 13.<sup>6</sup> This information is, at present, collected and exchanged between “competent authorities” on a confidential basis.

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<sup>2</sup> A full list of FACT members is available at: Financial Accountability and Corporate Transparency (FACT) Coalition, “Coalition Members,” 2022, <https://thefactcoalition.org/about-us/coalition-members-and-supporters/>.

<sup>3</sup> See, e.g., Ian Gary, Investors Fly Blind Without Public Country-by-Country Reports, Bloomberg Tax (Aug. 30, 2022), <https://news.bloombergtax.com/tax-insights-and-commentary/investors-fly-blind-without-public-country-by-country-reports>.

<sup>4</sup> FACT Coalition, *A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting*, 45-46 (Jul. 28, 2022), <https://thefactcoalition.org/wp-content/uploads/2022/07/FACT-Report-Final-Final--Reduced.pdf>.

<sup>5</sup> Thomas Torslov, Ludvig Wier & Gabriel Zucman, *The Missing Profits of Nations*, Review of Economic Studies (2022), <https://missingprofits.world/> (updated 2018 estimates). Real evidence of this profit-shifting is found in examples like Rio Tinto, which after years of protracted tax fighting with Australian competent authorities agreed to pay A\$613 million recently to resolve disputes relating to its shifting of profits to Singapore. See *Rio Tinto agrees to pay nearly \$1 billion in tax avoidance settlement with Australian Tax Office*, Reuters (Jul. 20, 2022), <https://www.abc.net.au/news/2022-07-21/rio-tinto-settles-1b-tax-bill-ato/101256184>.

<sup>6</sup> Critically, a recent OECD analysis finds that only three lower-middle-income countries have effective access to country-by-country information collected by other competent tax authorities. See IMF, *Fiscal Policy from Pandemic to War*, Chapter 2, p. 33 (2022), <https://www.imf.org/en/Publications/FM/Issues/2022/04/12/fiscal-monitor-april-2022>.

Nonetheless, investors, public-policy officials, civil society, and other stakeholders remain completely in the dark on the tax-dodging practices of MNEs in Australia and across the world, on a case-by-case basis. Public disclosure requirements for large publicly listed companies also do not provide adequate information to understand these practices across jurisdictions.

Consider that the “information asymmetries” identified by Treasury between MNEs and competent tax authorities, which helped to justify OECD Action Item 13, also exist between MNEs, on the one hand, and policymakers, investors, academics, civil society and other potential users of PCbCR information, on the other hand. Confidential country-by-country reporting under OECD Action Item 13 may address only one type of these information asymmetries, weakening the ability for country-by-country reporting to best address MNE tax participation and promote public trust in the tax system.

For policy-makers, academics, and civil society, information asymmetries’ stymie productive national and international tax negotiations meant to ensure that MNEs and their owners are appropriately taxed. For the public, secrecy regarding MNE tax practices, which both politically empowers and entrenches financial secrecy generally for the largest MNEs and wealthiest taxpayers (who tend to principally own these MNEs), erodes public trust in not only the tax system but in global democratic institutions more broadly.

Additionally, for investors, the failure to provide PCbCR can lead to misallocation of capital and greater market volatility stemming from tax and geopolitical risks. Our attached report, “*A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting*”<sup>7</sup> further details these issues. Our report gives examples that highlight the information gap facing investors and other users of financial statements for multinationals such as **Amazon, Pfizer, McDonalds, Shell and Dell—all of whom have an Australian presence**. For example, according to Amazon’s U.S. Securities and Exchange Commission (SEC) filings, the international tech behemoth recently relocated certain valuable intangible property rights back to the U.S. This restructuring might have material tax and related cash flow consequences, but it is difficult to tell the extent of these consequences based on the public securities laws currently only requiring blanket “domestic” and “international” tax information.

MNEs are more likely to engage in less aggressive and more sustainable practices when these information asymmetries are addressed. Indeed, PCbCR efforts in the EU regarding financial institutions provide convincing evidence that PCbCR is an effective tool to encourage taxpayers to engage in less aggressive tax behavior.<sup>8</sup> Similarly, with PCbCR investors will be able to

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While this does not address Treasury’s stated concerns, it is relevant in light of global governance standards (including as it relates to trust in systems like tax that can be a pillar of democracy) that many of the countries in the world that are most comparatively ravaged by profit shifting are not presently able to access confidential country-by-country reporting information. This might contribute to international corruption that threatens Australian national security.

<sup>7</sup> FACT Coalition, *A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting*, 45-46 (Jul. 28, 2022), <https://thefactcoalition.org/wp-content/uploads/2022/07/FACT-Report-Final-Final--Reduced.pdf>.

<sup>8</sup> See Michael Overesch and Hubertus Wolff, *Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance* (2020), <https://www.econbiz.de/Record/financial-transparency-to-the-rescue-effects-of-country-by-country-reporting-in-the-eu-banking-sector-on-tax-avoidance-overesch-michael/10012853394>.

identify overly aggressive tax planning strategies and invest accordingly, working to also decrease market volatility. Simultaneously, this too might encourage more responsible MNE tax governance practices, placing direct onus on senior leadership to understand and direct strategic tax decisions, and creating greater public accountability for these practices.

These “firm” level effects, in aggregate, can have greater significance. First, less aggressive tax practices by MNEs may result in increased government revenues helping to fund responses to critical challenges, like climate change. Second, MNEs currently rely on financial secrecy practices and jurisdictions to shift profits, and the ability for MNEs to play by a different set of rules through simple “paper” transactions erodes trust in tax systems. Notably, the same financial secrecy that enables profit shifting also enables the type of global corruption that undermines well-functioning democracies. MNEs are presently financially incentivized to expend political capital to preserve and politically entrench these secrecy practices. Through greater transparency, PCbCR can correct these improper incentives. In turn, this may also improve public trust in our tax systems and democratic institutions more broadly.

### *The Timing is Right for Australian PCbCR*

Global momentum for PCbCR is growing, and Treasury’s efforts are well-timed to take advantage of (and improve upon) many of these efforts. In 2019, following robust consultation with businesses, investors, academics, and civil society, the Global Reporting Initiative (GRI) introduced the gold-standard of voluntary PCbCR standards. The GRI 207 standard leverages OECD-based data to minimize reporting costs for reporting filers, while also creating a standard that maximizes information utility by addressing each category of information asymmetries identified above. Reporting under the GRI standard officially began in 2021.

In June 2021, the United States House of Representatives passed legislation,<sup>9</sup> which would require the U.S. SEC to implement mandatory PCbCR reporting requirements for covered MNEs. Companion Senate legislation is under consideration. In our recent report, attached as **Annex A**, FACT is calling on the U.S. SEC to use its current legal authority to require PCbCR for large filers under SEC jurisdiction. Doing so would complement the Treasury efforts the subject of this letter and create greater transparency across the globe.

In November 2021, the European Union (EU) implemented a limited form of PCbCR, effective in 2024.<sup>10</sup> Positively, the EU standard recognizes the ways in which interested stakeholders face information asymmetries resulting in undesirable tax policy with respect to both foreign and domestic MNEs, and the EU standard will require foreign MNEs to report to the extent sufficient contacts are established. This means Australian, American and EU headquartered MNEs may all begin to share some PCbCR information pursuant to the EU standard. Problematically, the EU standard is limited in its scope, requiring large multinationals to disclose information

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<sup>9</sup> See FACT Coalition, House Takes Historic Step in Advancing Corporate Tax Transparency (Jun. 16, 2021), <https://thefactcoalition.org/house-takes-historic-step-in-advancing-corporate-tax-transparency/>.

<sup>10</sup> See Corporate tax transparency: MEPs okay new country-by-country reporting rules, European Parliament (Nov. 2021), <https://www.europarl.europa.eu/news/en/press-room/20211108IPR16839/corporate-tax-transparency-meps-okay-new-country-by-country-reporting-rules>.

regarding only the EU and “non-cooperative jurisdictions” operations. The latter list is largely political and would not shed any information on well-known tax havens like Switzerland, Singapore, or even the United States, for example. This partial standard will not adequately resolve information asymmetries for those intended to use PCbCR.

Now is the prudent time for Treasury to advance fulsome PCbCR standards for large MNEs generating income in (or revenues resulting from final consumption or use in) Australia in line with GRI best practices.

### Growing Global Investor Support

An international consortium of investors, guided by FACT’s work and PIRC’s investment advice, have become vocal supporters for PCbCR. In the United States, investors with trillions of dollars in assets under management have urged Congress to act on PCbCR. Investors have also called for greater disaggregation of tax information at the Financial Accounting Standards Board (FASB), the independent U.S. generally accepted accounting principles (GAAP) standard-setter.<sup>11</sup> Investors also led the way in pushing for EU PCbCR,<sup>12</sup> and we expect this momentum to continue to grow.

Separately, activist investors are increasingly pressing large U.S. multinationals to disclose PCbCR consistent with GRI standards in the U.S. In May 2022, more than 21% of Amazon Inc.’s independent shareholders, worth more than \$144 billion, voted in favor of a shareholder resolution directing the giant to report PCbCR in line with the GRI standard following the SEC’s rejection of Amazon’s attempted dismissal of the resolution.<sup>13</sup> Leading proxy advisory firm Glass Lewis recommended shareholders vote in favor of the proposal. In June 2022, similar PCbCR proposals were filed by Microsoft and Cisco shareholders.

### **Responses:**

#### **1. Mandating full public country-by-country reporting (PCbCR) regarding all jurisdictions where large MNEs operate (Part 3 Questions: 1, 4, & 5)**

FACT encourages the Treasury to implement PCbCR that requires disclosure with respect to all jurisdictions where large MNEs operate. To address information asymmetries and address Treasury’s stated goals, FACT believes that PCbCR is most useful only when it provides a complete and comparable picture of MNE operations. The use of partial standards undermines

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<sup>11</sup> 63 Investors with \$2.9 trillion in Assets Under Management Send Letter to FASB in Support of Tax Transparency, FACT (Sept. 22, 2021), <https://thefactcoalition.org/62-investors-with-2-9-trillion-in-assets-under-management-send-letter-to-fasb-in-support-of-tax-transparency/>; 66 Investors with \$2.9 Trillion in Assets Under Management Show Support for the Disclosure of Tax Havens and Offshoring Act, FACT (May 11, 2021), <https://thefactcoalition.org/64-investors-with-nearly-2-9-trillion-in-assets-under-management-show-support-for-the-disclosure-of-tax-havens-and-offshoring-act/>.

<sup>12</sup>

<sup>13</sup> Amazon Investors Push Company on Global Tax Transparency, FACT (May 27, 2022), <https://thefactcoalition.org/amazon-investors-push-company-on-global-tax-transparency/>.

the utility and comparability of this information in using PCbCR information to bring greater public scrutiny to MNE tax practices and to build trust in the tax system.

**2. Defining reporting large MNEs to include any “significant global entity,” as defined under Subdivision 960-U of the Income Tax Assessment Act 1997 (ITAA 1997) (Part 3 Questions: 2 & 3)**

FACT agrees that “significant global entity” is the right definition as it includes a Global Parent Entity (GPE) or a member of a group of consolidated entities for accounting purposes as a single group, where either the GPE or the group’s annual global income is equal to or exceeds A\$1 billion, whether headquartered in Australia or overseas (with or without local operations).

Alternatively, and less preferably, the Treasury might consider employing a definition similar to the definition Australia already uses with respect to country-by-country reporting entities and country-by-country reporting groups; provided, that, in any case, FACT recommends Treasury adopt a definition that applies to both domestic and foreign-parented MNE groups so long as any applicable connections with Australia are established.

FACT believes that the connections required under the EU standard are too onerous to be practicable for Australia as a single jurisdiction, however. Instead, FACT recommends a lower threshold that might be triggered not only by Australian operations and established income reporting obligations, but also by sufficient contacts with Australia as a market jurisdiction in light of the recent international tax agreement at the OECD that would, pursuant to “Pillar one” reallocate certain taxing rights to those jurisdictions where goods or services are ultimately consumed or used.<sup>14</sup> Acknowledging Australian contacts based on a jurisdiction of final consumption or use would be particularly useful for PCbCR purposes in establishing a greater understanding of whether current Australian tax rules are adequate for those users of PCbCR who may be contemplating tax policy to ensure MNEs are appropriately contributing in Australia, or in evaluating trust in the Australian tax system.

FACT generally endorses PIRC’s views on any transition period.

**3. Requiring PCbCR consistent with 207-4 (Country-by-country reporting) of the Global Reporting Initiative (GRI) 207 standard (Part 3 Questions: 6 & 7)**

As stated above, FACT endorses the Treasury implementing PCbCR by effectively adopting the GRI 207 standard, subject to necessary adjustments that reflect Australian law. The GRI standard was completed following fulsome consultation with businesses, investors, academics, and others to create a standard that leverages OECD country-by-country reporting information to create highly useful information to investors, policy-makers, academics, civil society, and

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<sup>14</sup> Cf. KPMG report: EU “public” country-by-country reporting and implications for multinational groups, KPMG (Nov. 21, 2022), <https://home.kpmg/us/en/home/insights/2021/11/tnf-kpmg-report-eu-public-cbc-reporting-and-implications-for-multinational-groups.html> (explaining EU thresholds); OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Oct. 8, 2021), <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm>.

other users of PCbCR information at minimal additional costs. For those new filers, the GRI standard is designed to require filers to incorporate best tax governance practices regardless of size – practices that investors and other stakeholders have an interest in seeing employed outside the PCbCR context, as well. Partial standards, like those adopted in the EU, are not adequate substitutes.

**Conclusion:**

Treasury should be commended for its proposal to improve greater MNE tax transparency practices in Australia. Implementing PCbCR as recommended in this letter will have tangible benefits to Australian taxpayers and accelerate global momentum for the adoption of PCbCR regimes in other major jurisdictions. FACT is grateful for the opportunity to comment, and can be available to discuss further. Please contact Ryan Gurule at [rgurule@thefactcoalition.org](mailto:rgurule@thefactcoalition.org) with any questions or comments.

Ian Gary, Executive Director, FACT Coalition

Erica Hanichak, Government Affairs Director, FACT Coalition

Ryan Gurule, Policy Director, FACT Coalition

Annex A

*A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting*

*(attached)*





## A Material Concern:

### *The Investor Case for Public Country-By-Country Tax Reporting*

JULY 28, 2022



**FACTCOALITION**

Financial Accountability & Corporate Transparency

# A Material Concern

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## The Investor Case for Public Country-By-Country Tax Reporting



*July 2022*

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The recommendations and views expressed in this report are strictly those of the FACT Coalition and do not necessarily reflect the views of our funders or those who provided review.

Founded in 2011, the Financial Accountability and Corporate Transparency (FACT) Coalition is a 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 promotes policies to combat the harmful impacts of corrupt financial practices. More information about the coalition can be found at the back of this report or on the FACT Coalition website at [www.thefactcoalition.org](http://www.thefactcoalition.org).

# Executive Summary

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*Investors and other users of financial statements face potential harms because they lack meaningful insight into tax and certain capital risks and opportunities facing large multinational enterprises.*

Disclosures required under current Securities and Exchange Commission (SEC) reporting rules are not sufficiently detailed for investors to adequately understand the risks and opportunities facing the businesses the investor owns. This report includes examples of dramatic revenue and related tax implications for investors arising out U.S. and international tax enforcement and reform efforts, the Russian invasion of Ukraine, and significant Delaware law decisions. These examples highlight the information gap facing investors and other users of public financial statements.

These examples include:

- **Amazon**, the international tech behemoth that, according to its SEC filings, recently relocated certain valuable intangible property rights back to the U.S. This restructuring might have material tax and related cash flow consequences, but it is difficult to tell based on the currently limited “domestic” and “international” tax information required by the SEC.
- **Pfizer**, whose business was transformed by the Covid-19 pandemic and the revolutionary vaccine it co-created, leaving investors potentially wondering how to value the tax consequences of a business that now reports it generates 75% of its income from foreign sources.
- **McDonalds and Shell**, whose voluntary filings raise questions about how a lack of mandated SEC disclosure could amplify market volatility stemming from geopolitical risks, as contextualized in the Ukraine-Russia crisis.
- **Dell**, whose take-private transaction in 2013 raised offshore tax planning questions worth billions of dollars to investors, resulting in Delaware case law that is all the more difficult to understand when considering that investors have no real insight into the strategic international tax planning of the multinational enterprises (MNEs) they own.

**Through public country-by-country reporting (PCbCR), investors would gain meaningful insights**

**into risks relating to free cash flow, corporate governance and operational practices, and geopolitical concerns, among other benefits.** Ample precedent exists for creating standardized, useful PCbCR frameworks for the SEC at minimal implementation costs for reporting companies.

*The conclusions of this study support the need for and financial materiality of PCbCR.*

To truly understand an investment's risks and opportunities, investors need an understanding of where revenues are generated, where taxable income is booked, and the business being conducted in global jurisdictions, among other factors. In contrast, the lack of transparency on tax risks reduces investors' ability to understand a firm's governance mechanisms, as factors like accounting and tax strategy may be as meaningful as board structure and leadership in evaluating the board's oversight of a company's management team and its propensity to engage in risk-causing activities. **For investors, this lack of insight increases the risk of modeling and valuation inaccuracies, potentially leading to inefficient capital allocation decisions—making guess work where information is readily available.** In turn, this could lead to greater volatility in the market, bond spreads, and other negative market outcomes.

This report demonstrates these risks by discussing how limited income tax disclosure inherently constrains the accuracy of common investor valuation methods, including discounted cash flow (DCF) modeling. Through this analysis, we can reveal how more detailed country-by-country information might better explain differences between reported tax information and tax volatility across all sectors.

Similarly, returning to **McDonald's**, we can see how limited country-by-country revenue and net income information provided by the company relating to its Russian and Ukrainian operations reveal how PCbCR is also an important valuation tool in light of geopolitical risks. **Information voluntarily filed by McDonald's after Russia's invasion shows how investors might have been able to anticipate and allocate capital so as to avoid what could have been a material decline in share value equal to around \$7.20 per share following the invasion.**

*Voluntary tax reporting standards potentially create asymmetric information risks signaling a need for more uniform disclosures.*

An analysis of select non-U.S. multinational companies voluntarily engaging in PCbCR demonstrates that the information currently presented often falls short of best practices under Global Reporting Initiative (GRI) standards, or would otherwise be considered incomplete. The

utility of the information included in PCbCR is greatly diminished when done in an ad-hoc fashion. This also demonstrates challenges in proposed PCbCR standards that limit relevant information presented, such as those recently advanced in the European Union (EU) and discussed further in the report.



## **Recommendations:**

**Given the authority already vested in the SEC to determine accounting disclosure rules for publicly listed companies, FACT recommends the following:**

1. The SEC should exercise its clear rulemaking authority under sections 12(b) and 13(b) of the Securities Exchange Act of 1934 to require PCbCR to be filed under Regulation S-X for identified filers.<sup>1</sup>
2. The SEC PCbCR rule should require disaggregated information regarding related party revenues, third party revenues, net profit (loss), tangible assets, employee head count, corporate income cash taxes paid, and corporate income tax accrued, among other key items detailed in Annex IV of this report, on a jurisdiction-by-jurisdiction basis.
3. The SEC PCbCR rules should apply to all industries and jurisdictions, and PCbCR disclosure should be required pursuant to uniform standards for all applicable filers so that investors have access to data that is comparable and most useful in securities analysis.<sup>2</sup>
4. PCbCR information should be presented with such additional disclosure as filers deem necessary to explain their tax contributions and their strategic operations, provided such disclosure does not otherwise violate any requirements under Rule 10b-5 or similar.
5. The SEC should also signal to the Financial Accounting Standards Board (FASB) that FASB should accelerate its U.S. generally accepted accounting principles (GAAP) tax disaggregation guidance project<sup>3</sup> and make clear that greater country-by-country tax disaggregation should apply to all publicly filing companies, in a manner that supports and compliments the SEC's PCbCR rulemaking.



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## **Glossary**

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BEPS – Base Erosion and Profit-shifting (OECD Project)

DCF - Discounted Cash Flow

ETR – effective tax rate

EU – European Union

FASB – Financial Accounting Standards Board

GAAP – generally accepted accounting principles

GLoBE – The Global Anti-Base Erosion Model Rules for implementing Pillar 2 of the OECD Agreement reached on October 8, 2021.

GRI – Global Reporting Initiative

IF – Inclusive Framework (OECD)

IRS – Internal Revenue Service

MNE – multinational enterprise

OECD – Organization for Economic Cooperation and Development

PCbCR – public country-by-country reporting

SEC – U.S. Securities and Exchange Commission

## I. Introduction

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Investors are in the business of being in the know—and right now, there is a lot to know in global markets. Global governments seeking to tackle existential threats like climate change and the global Covid-19 pandemic, are engaging in previously unthinkable multilateral and unilateral efforts to crack down on profit shifting tax practices by MNEs seeking to reduce their tax liability. The same existential threats are impacting international supply chains and global markets, which are also continually being revolutionized by technological advancements that are crumbling historical business practices and eroding international boundaries. At the same time, political forces all over the world are pushing back on more global and more democratic institutions, in a way that is creating geopolitical risk. The problem is that investors, due to inadequate SEC disclosure rules, have very little information regarding any of these monumental headwinds as they try to navigate their investment decisions—making it all the more difficult to be “in the know.”

The push for country-by-country reporting began as an effort to rein in corporate tax practices that deprive countries of the resources necessary to fund their development.<sup>4</sup> As country-by-country reporting efforts have matured, the usefulness of making country-by-country information public has become increasingly apparent to investors.

Public country-by-country reporting (PCbCR) can improve securities analysis, providing a more complete picture of material risks relating to free cash flows, corporate governance and operational practices, and geopolitical risks, among other benefits. PCbCR best practices, as further discussed in Annex IV of this report, would

*Access to PCbCR can improve capital allocation, reduce volatility in the market, and promote more sustainable global economic growth to the benefit of all investor types.*

provide investors with the following information on a jurisdiction-by-jurisdiction basis that is already collected in connection with IRS filing requirements discussed above:

- i. Names of the resident entities.
- ii. Primary activities of the organization.
- iii. Number of employees, and the basis of calculation of this number.
- iv. Revenues from third-party sales.
- v. Revenues from intra-group transactions with other tax jurisdictions.
- vi. Profit/loss before tax.
- vii. Tangible assets other than cash and cash equivalents.
- viii. Corporate income tax paid on a cash basis.

- ix. Corporate income tax accrued on profit/loss.
- x. Reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax.

Tax transparency efforts initiated by the Organization for Economic Co-operation and Development (OECD) have resulted in collaboration between far-flung tax districts of impressive scale and effectiveness to collect this information on a non-public basis. In furthering OECD BEPS Action Item 13, specified country-by-country information is currently reported to the Internal Revenue Service (IRS) for U.S. multinational enterprises that generate more than \$850 million in revenue in a given year.<sup>5</sup> This information may be exchanged with competent tax authorities in partner jurisdictions pursuant to bilateral agreements on a confidential, secure basis. Nonetheless, investors and other users of publicly filed financial statements, including relevant stakeholders, policy-makers, academics, and members of civil society do not currently have access to this information. Instead, the IRS only publishes this information on an aggregate basis by industry.

Access to PCbCR can improve capital allocation, reduce volatility in the market, and promote more sustainable global economic growth to the benefit of all investor types. For this reason, there has been a recent surge in investor support for PCbCR, helping give momentum to the passing of the Disclosure of Tax Havens and Offshoring Act by the U.S. House of Representatives in July 2021,<sup>6</sup> voluntary international reporting standards, limited international adoption of PCbCR in the European Union (EU),<sup>7</sup> and most recently, increasing shareholder activism on a company-by-company basis seeking to require certain tech giants, like Amazon, Microsoft, and Cisco Systems, to implement PCbCR.<sup>8</sup> **In support of the Amazon shareholder filing, investors with \$3.6 trillion in assets under management wrote the Securities and Exchange Commission (SEC) encouraging the SEC to reject Amazon efforts to squash the vote. The SEC did reject Amazon's efforts, and in doing, noted that the tax information sought wasn't ordinary course business that can be excluded from vote.**<sup>9</sup> Independent investors representing 21% of Amazon's outstanding shares voted in support of these efforts at Amazon's annual meeting on May 25, 2022.<sup>10</sup>

*Investors with trillions of dollars in assets under management are leading efforts for greater transparency for large multinationals*

The current "gold-standard" for voluntary PCbCR has been promulgated by the Global Reporting Initiative (GRI). However, due precisely to its voluntary nature, the GRI reporting requirements are not sufficient to yield data necessary to provide meaningful insights to investors reliably over time or across companies and sectors. While the GRI standard is to be commended for

its comprehensive scope and investor focus, the ability of firms to selectively omit relevant data when filing under voluntary standards (or, ignore them entirely under certain frameworks) makes comparisons challenging and often confounds analysis. This may lead to information asymmetries, in conflict with the SEC's work to provide consistent, reliable public disclosure.

**The FACT Coalition recommends the adoption of mandatory PCbCR for large multinational enterprises operating or headquartered in the United States pursuant to international best practices, in line with growing investor momentum.** The SEC presently has the authority to require PCbCR for multinational organizations subject to SEC filing requirements by amending Regulation S-X pursuant to its rulemaking authority under the 1934 Securities and Exchange Act.<sup>11</sup>

While detractors have argued that disclosing this information publicly might reveal sensitive strategic information or lead to misuse by the public, neither argument is convincing. There is nothing competitively sensitive about the paper transactions that support global profit shifting. Durable competitive advantage does not come from aggressive tax planning that is not rooted in actual operations. Rather, competitive advantage arises from producing better products and services that meet the needs of customers.

Further, the most likely users of this information are the very investors that already use financial statements, as well as those shaping public policy—such as policy-makers, academics, and civil society users, who will be capable of making more informed decisions with this information, as this report demonstrates. In contrast, arguing that highly useful information should not be disclosed because it might be misinterpreted contravenes the entire purpose of public filing requirements. **PCbCR should require MNE's to publicly report information they already have (or should have) to give investors real-time insight into their global operations and to separate real competitive advantage from overly aggressive and volatile tax planning strategies.**

Investors with trillions of dollars in assets under management are leading efforts for greater transparency for large multinationals, just as with the Amazon shareholder proposal.<sup>12</sup> This report helps to demonstrate the reasoning behind these efforts, highlighting the inadequacy of information currently provided to investors, the materiality of PCbCR information in securities valuation, and the inherent weaknesses in voluntary reporting regimes. **It is time for the SEC to heed growing investor calls and international reporting trends, and to promulgate PCbCR rules in the United States.**

II. Fumbling in the Dark: Investors lack meaningful information regarding the operations of multinational enterprises

Under sections 12(b) and 13(b) of the Securities Exchange Act of 1934, the Commission has broad rule-making authority to require disclosure regarding any issuer (and other person directly or indirectly controlling or controlled by an issuer) that is necessary or appropriate in the public interest or for the protection of investors, in respect of: (a) the organization, financial structure, and nature of the business, (b) certain balance sheet or profit and loss statement information, and (c) as may be deemed necessary or appropriate by the Commission for the protection of investors, any further financial statements.<sup>13</sup> Yet, current mandatory public reporting provides limited information regarding where or how revenues are generated, where or how taxable income is booked, and other implications of corporate tax decisions. PCbCR can address these information gaps and help the SEC fulfill its charge to advance the public interest and protect investors.

A. Missing the Fine Print – What Current Public Company Tax Disclosures Lack

At a baseline, consider how current public reporting requirements fail to require adequate detail regarding revenues, profits, taxes accrued and paid, tangible assets, activities, and employees. U.S. public filers generally report tax accounting information pursuant to section 210.4-08(h) of Regulation S-X, promulgated by the SEC,<sup>14</sup> as clarified by U.S. Generally Accepted Accounting Principles (GAAP) principles determined by the SEC’s ostensibly perpetual independent accounting standards-setter: the Financial Accounting Standards Board (FASB).<sup>15</sup>

A comparison of current SEC or GAAP rules to the information that would be required under international PCbCR best practices in Annex IV helps illustrate these shortcomings.

Figure 1. Limited Information for Investors and Other Users of Public Financial Statements:

Total Revenues	<p>Foreign revenues may be reportable in a specific geographic area in which assets or revenue or income before income tax or net income exceed 10% of the comparable amount as reported in the financial statements.</p> <p>Foreign revenues may be reportable in aggregate if foreign assets, revenue, income (loss), or net income (loss) exceeded 10% of the corresponding amount in the related financial statements, but such assets are not reportable in any specific geographic area. See 17 C.F.R 210.9-05 (emphasis added).</p>
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Third-Party Revenues versus Intra-Party Revenues	Pursuant to 17 C.F.R. 210(k) amounts of related party transactions should be stated on the face of the balance sheet, statement of comprehensive income, or statement of cash flows; nevertheless, GAAP guidance removes most intercompany transactions from GAAP financial statements for consolidated filers. See ASC 810-10-45-1. <b>This means that in many intercompany transactions used for tax-dodging purposes and that could create capital risks are generally not visible in most financial statements.</b>
Profit/Loss Before Tax	See 17 C.F.R. 210.9-05 (detailing rules around income reporting for foreign activities). See also 17 C.F.R. 210.4-08(h)(1) (Disclosure shall be made in the statement of comprehensive income or a note thereto, of the components of income (loss) before income tax expense (benefit) as <i>either domestic or foreign.</i> ) (emphasis added).
Tax Accrued	Disclosure shall be made of... (i) the components of income (loss) before income tax expense (benefit) as <i>either domestic or foreign;</i> (ii) the components of income tax expense, including: (A) <i>taxes currently payable</i> and (B) the net tax effects, as applicable, of timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences, such as depreciation, warranty costs, etc., where the amount of each such tax effect exceeds 5% of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate; other differences may be combined.) 17 C.F.R 210.4-08(h)(1)(i)-(ii) (emphasis added). <sup>16</sup>
Taxes Paid (cash)	See above. Total aggregate cash taxes paid is often reported, but not necessarily required. It is not reported on a country-by-country basis.
Activities	See 17 C.F.R 210.9-05 (detailing necessary disclosure of assets, revenues, income (loss), or net income (loss) in certain reporting segments if foreign portion exceeded 10% of the corresponding amount in the related financial statements).

Tangible Assets	<p>Foreign assets may be reportable in a specific geographic area in which assets or revenue or income before income tax or net income exceed 10% of the comparable amount as reported in the financial statements.</p> <p>Foreign assets may be reportable in aggregate if foreign assets, revenue, income (loss), or net income (loss) exceeded 10% of the corresponding amount in the related financial statements, but such assets are not reportable in any specific geographic area.</p> <p>See 17 C.F.R 210.9-05 (emphasis added).</p>
Employees	<p>Despite increased focus on human capital management, public filers are required only to provide an aggregate worldwide employee headcount. See 17 C.F.R. 229.101(c)(ii)(2).</p>

The dearth of information provided has left investors fumbling in the dark to anticipate risk and appropriately allocate capital in light of changing tax enforcement practices and reform efforts, as well as broader geopolitical risks. From the above, the threshold for breaking out essential accounting information relating to various operations or results for multinational enterprises requires that a specific geographic area comprise more than 10% of the comparable component under current SEC guidance. That might be considered an inherently material amount; however, it often paints an incomplete picture for users of financial statements, including regarding tax governance decisions. **For those allocating capital, it remains unclear why readily available information that might materially sway the value of a stock or other security would not be made publicly available to prospective or current investors.**

**Recent global considerations relating to international tax enforcement and reform efforts, such as the global Covid-19 pandemic, the fallout from the Russian invasion of Ukraine, and relevant updates from Delaware courts each highlight the need for standardized PCbCR for large multinational corporations to better evaluate tax and geopolitical risks that can materially impact investor valuations.**



## B. Tax Costs and International Headwinds

Multinational enterprises are facing increasing global tax costs as a result of governments around the world multilaterally (or unilaterally) cracking down on problematic tax avoidance strategies. Profit shifting and tax-base erosion by MNEs has been identified as a singular frustration in addressing existential threats like climate change, costing global governments between

*Profit shifting and tax-base erosion by MNEs has been identified as a singular frustration in addressing existential threats like climate change, costing global governments between \$100 and \$240 billion annually.*

\$100 and \$240 billion annually.<sup>17</sup> In the U.S. alone, the U.S. Treasury may be losing between \$70 and \$100 billion per year due to profit shifting practices of MNEs.<sup>18</sup> The aggregated country-by-country data statistics published by the IRS, based on information collected consistent with OECD BEPS Action Item 13, supports that this trend is continuing even after 2017 U.S. international tax reforms. As global governments look to shore up and create a more sustainable revenue base to combat historic challenges such as climate change, persistent social and economic inequities, and a global pandemic, multilateral and unilateral efforts to clamp down on MNE profit shifting have gained increased urgency.<sup>19</sup>

### 1. Multilateral Tax Reform Efforts

Multilateral global tax reform agreed to by 137 jurisdictions, including the U.S., under the auspices of the OECD base erosion and profit-shifting (BEPS) initiative in October of 2021 would create a 15% global minimum effective tax rate (ETR) on large multinationals that applies on a country-by-country basis. This would be subject to an exemption for certain profits equal to 8% of tangible assets and 10% of payroll investment in each applicable jurisdiction, declining in each case over a 10-year period to a 5% exemption for each of tangible assets and payroll. The OECD achieves this result through two top-up taxes (together, the “GloBE” rules)—an Income Inclusion Rule (or IIR) that gives preferential taxing rights to parent or source jurisdictions (when considering the possibility to create a domestic minimum top-up tax in conformance with GLoBE rules), and an undertaxed-payments rule (UTPR) that gives an effective top-up tax right to market jurisdictions if/as other jurisdictions fail to implement GLoBE compliant tax regimes.



Critically, because of the UTPR, even if the U.S. does not pursue needed international tax reform to align the its current minimum international tax regime with GLoBE rules, U.S. MNEs as well as many U.S. listed foreign MNEs will remain subject to a 15% ETR in every jurisdiction so long as any one (or a critical bloc) of the 137 adopting Inclusive Framework (IF) jurisdictions advance the OECD reforms.<sup>20</sup>

**Taking a look at the aggregated country-by-country data available from the IRS, this means that many U.S. MNEs, including publicly filing entities, are likely to experience increased tax costs if multilateral tax reforms proceed.**<sup>21</sup>

Figure 2. Tax Haven Income for U.S. MNEs Per IRS Country-by-Country Data<sup>22</sup>

6 Example Tax-Haven Jurisdiction <sup>23</sup>	2019 U.S. Multinational Profit (in thousands) [Excludes MNE (loss)]	2019 ETR Based on Cash Tax Rate	2018 U.S. Multinational Profit (in thousands) [Excludes MNE (loss)]	2018 ETR Based on Cash Tax Rate	2019 Employee numbers (for reference)	2019 Profits per Employee (for reference)
Puerto Rico	\$34,754,568	3.43%	\$38,468,865	1.44%	64,107	\$542,133.75
Luxembourg	\$46,476,501	1.54%	\$68,381,103	1.45%	11,126	\$4,177,287.52
Netherlands	\$99,466,622	5.54%	\$84,449,381	4.72%	129,153	\$770,145.66
Switzerland	\$71,994,294	4.35%	\$66,575,657	6.21%	67,901	\$1,060,283.27
Bermuda	\$44,595,033	0.62%	\$105,273,430	0.44%	718	\$62,110,073.47
Cayman Isl.	\$70,203,019	0.05%	\$57,172,853	0.33%	1,023	\$68,624,651.83
Total / Average ETR	\$367,490,038	2.96%	\$420,321,289	2.46%		

Figure 3. U.S. MNEs Facing Global Tax Reform Fallout Per IRS Country-by-Country Data<sup>24</sup>

Year	# of MNE Enterprise Groups with positive profit and ETR of less than 15%	% of MNE Enterprise Groups (\$850 mm revenue/year filing threshold)
2019	3,581	32.81%
2018	3,505	32.82%
2017	3,333	32.24%
2016	2,443	30.94%

Three things can be gleaned from this set of information in light of U.S. and global tax reforms:

1. These numbers are surprisingly consistent, despite earlier international tax reform in 2017 in the United States effectively creating an offshore minimum tax (at a rate far below 15%, including due to certain loopholes in the law).

2. This report did not review international CbCR data but it is worth noting that these numbers are relevant in light of global international tax reform discussions and may be very relevant to investors, including the extent that any U.S. PCbCR regime covers all U.S. listed and SEC regulated multinationals (and not just U.S. headquartered multinationals reporting on IRS Form 8975).<sup>25</sup>
3. The amount of profits that will potentially be subject to increased tax costs in light of a global minimum tax agreement that will apply to tax profits on a country-by-country basis is substantial: hundreds of billions of dollars.

In the Cayman Islands alone, U.S. MNEs appear to have booked \$70 billion in income in 2019.<sup>26</sup> In an economy generating \$5.9 billion in productive output (GDP), it is apparent that much of the income represents tax planning to achieve an attractive 0.05% ETR based on cash taxes paid. Underlying tangible and payroll assets are not present in the Cayman Islands (or Switzerland

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or Bermuda, for that matter) that would explain this income for other reasons. If in the future, 14.95% of this \$70 billion were made subject to a global mandatory minimum tax regime, almost \$10.5 billion could instantly evaporate from the annual earnings of selected multinationals. Expand

this view to consider all six tax havens, and investors may be caught flat-footed in the face of up to \$44.25 billion in annual increased tax costs across U.S. markets—regardless of the government that collects these funds.<sup>27</sup> As an investor, gleaning insight into company exposures in this regard would simply represent prudent risk management.

Yet, as discussed above, current public filing information provides investors with little insight into which MNEs will be subject to these increased tax costs and to what extent. Instead, every MNE that is a public entity only shares information for two distinct categories: U.S. and international tax. This is insufficient in the context of evolving U.S. and international tax standards and regulations.

The public filings of two U.S. multinationals highlight how the lack of PCbCR can raise more questions than answers as it relates to financial valuation for large multinationals in light of these risks.



#### **a) Amazon.Com, Inc. and a Changing Global Landscape**

Amazon's is well known as a one of the largest companies in the world by revenue, and this position has led to increased interest in its international tax practices. On May 25, more than 21% of Amazon's independent shareholders backed a proposal calling for the company to consider engaging in PCbCR in line with GRI standards.<sup>28</sup> The proposal represents a first of its kind<sup>29</sup> campaign by investors to advance a vote on public country-by-country reporting. Prominent investors backing the proposal included Norway's state pension fund (with assets over \$1 trillion), UK investment fund Legal & General Investment Management, and the New York City Comptroller. Proxy advisory firms such as Glass Lewis and Morningstar also recommended voting in favor of the proposal. Amazon had fought inclusion of the proposal but the SEC sided with shareholders and the proposal remained on the ballot, aligning with the call from investors with more than \$3.6 trillion in assets under management to bring greater transparency to Amazon via PCbCR.<sup>30</sup>

While it is interesting to see this shareholder momentum, one might be able to see why investors are keen to understand Amazon's tax practices. Investors currently primarily see the following, in addition to limited additional narrative disclosure describing potential tax-contests at a high-level, trying to parse Amazon tax and global operational practices:

Figure 4.<sup>31</sup>

The components of the provision for income taxes, net are as follows (in millions):

	Year Ended December 31,		
	2019	2020	2021
U.S. Federal:			
Current	\$ 162	\$ 1,835	\$ 2,129
Deferred	914	(151)	155
Total	1,076	1,684	2,284
U.S. State:			
Current	276	626	763
Deferred	8	(190)	(178)
Total	284	436	585
International:			
Current	1,140	956	2,209
Deferred	(126)	(213)	(287)
Total	1,014	743	1,922
Provision for income taxes, net	\$ 2,374	\$ 2,863	\$ 4,791

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 Amazon 2021 FORM 10-K

Figure 5.

U.S. and international components of income before income taxes are as follows (in millions):

	Year Ended December 31,		
	2019	2020	2021
U.S.	\$ 13,285	\$ 20,219	\$ 35,879
International	691	3,959	2,272
Income before income taxes	\$ 13,976	\$ 24,178	\$ 38,151

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 Amazon 2021 FORM 10-K

Figure 6.

The items accounting for differences between income taxes computed at the federal statutory rate and the provision recorded for income taxes are as follows (in millions):

	Year Ended December 31,		
	2019	2020	2021
Income taxes computed at the federal statutory rate	\$ 2,935	\$ 5,078	\$ 8,012
Effect of:			
Tax impact of foreign earnings and losses	453	(538)	(1,349)
State taxes, net of federal benefits	221	343	465
Tax credits	(466)	(639)	(1,136)
Stock-based compensation (1)	(850)	(1,107)	(1,094)
Foreign income deduction (2)	(72)	(372)	(301)
Other, net	153	98	194
Total	\$ 2,374	\$ 2,863	\$ 4,791

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 Amazon 2021 FORM 10-K

Though one of the largest, most international companies in the world, Amazon distills its U.S. and international income components into two lines in line with SEC requirements. That makes understanding Amazon's 2020 \$1.2 billion in settlements with tax authorities quite difficult for investors.<sup>32</sup> That investors have no real insight into this information (other than with respect to contingent tax liabilities, with respect to which there is additional high-level detail), is all the more surprising given that Amazon is in the driver's seat for its own potentially aggressive tax strategies.

At the same time, we can understand from this most recent annual report that Amazon has made a drastic change to its capital structure in December 2021—potentially in response to prior tax reform or, more likely given the five-year delay, the looming threat of additional international tax reform. Amazon has apparently engaged in an intercompany transaction that involved “the distribution of certain intangible assets from Luxembourg to the U.S. in Q4 2021, resulting in the utilization of \$2.6 billion of Luxembourg deferred tax assets previously subject to a valuation allowance.”

This transaction might have material cash flow and capital cost implications. In comparison to the U.S. headline corporate tax rate of 21%, the ETR in Luxembourg for large U.S. multinationals hovered at around 1.5% in 2018 and 2019 per the above analysis. Of course, Amazon's recent U.S. cash taxes paid have also been significantly less than the headline rate in recent years.<sup>33</sup> **Based on current public filings, it seems impossible for investors to tell with any certainty how a potentially material internal restructuring might impact the long-term value of Amazon.** PCbCR would shed additional light on this transaction and empower investors to better understand how Amazon is adapting to a changing global landscape.





## b) Pfizer, Inc. and a Global Pandemic

The effects of the Covid-19 pandemic continue to impact the global economy and it remains difficult to predict with certainty how

*From publicly filed financial statements, we can see that the Covid-19 vaccine has completely transformed Pfizer operations, revenues, and tax implications. What is less clear is whether and to what extent investors have adequate insight based on current SEC rules into tax and other risks inherent in the revolutionized pharmaceutical giant.*

the virus will continue to effect global supply chains and international, national, and local commerce. One U.S. multinational that has and will likely continue to be forever changed by the global pandemic is Pfizer, Inc., the co-creator, along with BioNTech SE, of one of the principal Covid-19 vaccines, “Comirnaty.”

From publicly filed financial statements, we can see that the Covid-19 vaccine has completely transformed Pfizer operations, revenues, and tax implications. What is less clear is whether and to what extent investors have adequate insight based on current SEC rules into tax and other risks inherent in the revolutionized pharmaceutical giant. Below are certain tables describing tax liability and revenue allocation that Pfizer presented in connection with its 2021 annual report:<sup>34</sup>

Figure 7.

A. Taxes on Income from Continuing OperationsComponents of *Income from continuing operations before provision/(benefit) for taxes on income* include:

(MILLIONS)	Year Ended December 31,		
	2021	2020	2019
United States	\$ 6,064	\$ (2,887)	\$ 7,332
International	18,247	9,924	3,988
<i>Income from continuing operations before provision/(benefit) for taxes on income</i> <sup>(a), (b)</sup>	<b>\$ 24,311</b>	<b>\$ 7,036</b>	<b>\$ 11,321</b>

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 Pfizer 2021 FORM 10-K

Figure 8.

B. Tax Rate ReconciliationThe reconciliation of the U.S. statutory income tax rate to our effective tax rate for *Income from continuing operations* follows:

	Year Ended December 31,		
	2021	2020	2019
U.S. statutory income tax rate	21.0 %	21.0 %	21.0 %
TCJA impact <sup>(a)</sup>	—	—	(2.9)
Taxation of non-U.S. operations <sup>(b), (c)</sup>	(4.3)	(9.9)	(4.7)
Tax settlements and resolution of certain tax positions <sup>(a)</sup>	(0.4)	(2.7)	(14.0)
Completion of Consumer Healthcare JV transaction <sup>(a)</sup>	—	—	8.3
Certain Consumer Healthcare JV initiatives <sup>(a)</sup>	(6.0)	—	—
U.S. R&D tax credit	(0.5)	(1.4)	(0.8)
Interest <sup>(d)</sup>	0.4	1.1	0.6
All other, net <sup>(e)</sup>	(2.6)	(2.8)	(2.3)
Effective tax rate for income from continuing operations	<b>7.6 %</b>	<b>5.3 %</b>	<b>5.2 %</b>

<sup>(a)</sup> See Note 5A.

<sup>(b)</sup> For taxation of non-U.S. operations, this rate impact reflects the income tax rates and relative earnings in the locations where we do business outside the U.S., together with the U.S. tax cost on our international operations, changes in uncertain tax positions not included in the reconciling item called "Tax settlements and resolution of certain tax positions," as well as changes in valuation allowances. Specifically: (i) the jurisdictional location of earnings is a significant component of our effective tax rate each year, and the rate impact of this component is influenced by the specific location of non-U.S. earnings and the level of such earnings as compared to our total earnings; (ii) the U.S. tax implications of our foreign operations is a significant component of our effective tax rate each year and generally offsets some of the reduction to our effective tax rate each year resulting from the jurisdictional location of earnings; (iii) the impact of certain tax initiatives; and (iv) the impact of changes in uncertain tax positions not included in the reconciling item called "Tax settlements and resolution of certain tax positions" is a component of our effective tax rate each year that can result in either an increase or decrease to our effective tax rate. The jurisdictional mix of earnings, which includes the impact of the location of earnings as well as the U.S. tax cost on our international operations, can vary as a result of operating fluctuations in the normal course of business and as a result of the extent and location of other income and expense items, such as restructuring charges, asset impairments and gains and losses on strategic business decisions. See also Note 5A for the components of pre-tax income and *Provision/(benefit) for taxes on income*, which is based on the location of the taxing authorities, and for information about settlements and other items impacting *Provision/(benefit) for taxes on income*.

<sup>(c)</sup> In all years, the reduction in our effective tax rate is a result of the jurisdictional location of earnings and is largely due to lower tax rates in certain jurisdictions, as well as manufacturing and other incentives for our subsidiaries in Singapore and, to a lesser extent, in Puerto Rico. We benefit from Puerto Rican tax incentives pursuant to a grant that expires during 2029. Under such grant, we are partially exempt from income, property and municipal taxes. In Singapore, we benefit from incentive tax rates effective through 2047 on income from manufacturing and other operations.

<sup>(d)</sup> Includes changes in interest related to our uncertain tax positions not included in the reconciling item called "Tax settlements and resolution of certain tax positions".

<sup>(e)</sup> All other, net is primarily due to routine business operations.

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 Pfizer 2021 FORM 10-K

Figure 9.

<i>Property, plant and equipment</i>		<b>\$ 14,882</b>	\$ 13,745
The following provides long-lived assets by geographic area:			
		As of December 31,	
(MILLIONS)		2021	2020
Property, plant and equipment			
United States	<b>\$ 8,385</b>	\$ 7,666	
Developed Europe	<b>5,094</b>	4,775	
Developed Rest of World	<b>347</b>	413	
Emerging Markets	<b>1,056</b>	890	
<i>Property, plant and equipment</i>	<b>\$ 14,882</b>	\$ 13,745	

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 Pfizer 2021 FORM 10-K

Figure 10.

B. Geographic Information

The following summarizes revenues by geographic area:

		Year Ended December 31,		
(MILLIONS)		2021	2020	2019
United States	<b>\$ 29,746</b>	\$ 21,455	\$ 20,326	
Developed Europe	<b>18,336</b>	7,788	7,729	
Developed Rest of World	<b>12,506</b>	4,036	4,022	
Emerging Markets	<b>20,701</b>	8,372	8,828	
<i>Revenues</i>	<b>\$ 81,288</b>	\$ 41,651	\$ 40,905	

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 Pfizer 2021 FORM 10-K

There is no immediate reason from this information to suspect that Pfizer is not fully complying with SEC disclosure rules or international tax laws; however, investors trying to understand how Pfizer's operations, revenue, and income tax risks have changed in light of these transformative events would be left with more questions than answers. Narrative description provided by Pfizer relating to contingent tax liabilities and ongoing tax controversies, while helpful, is also challenging to translate into meaningful financial analysis. For example, the presented information raises the following questions as it relates to creating risk-based financial valuation models:

- **Expenses Lower Tax in the U.S. for Profits Booked Elsewhere** – U.S. income for tax purposes was negative in 2020, due principally to a single transaction and increased research and development (R&D) costs.<sup>35</sup> This makes sense given that Pfizer was engaged in well-known research and development around the Covid-19 vaccine; however, it does seem indicative that the Covid-19 vaccine R&D was principally conducted in the United States. In contrast, taxable income gains from Comirnaty seem to be spread across U.S. and foreign jurisdictions, indicating that Pfizer is likely engaged in transfer-pricing practices—which may



be entirely within the confines of the law—with intangible property stemming from U.S. R&D being relocated to certain foreign jurisdictions. This is not atypical practice, even if it does create profit-shifting and base-erosion risks. Without further information, though, investors cannot fully understand these risks.

- **An Offshore Advantage** – What is clear is that Pfizer has consistently and materially “lowered” its taxes, compared to what it would have paid in the U.S., as a result of income located in foreign jurisdictions (versus in the U.S.), achieving ETRs equal to 4.3%, 9.9%, and 4.7% in 2021, 2020, and 2019, respectively.
- **Tip of the Foreign Profits Iceberg** – In fact, we now see that Pfizer is reporting that 75% of its income is foreign. That is almost a complete inversion from 2019 numbers. Yet, investors only see a single consolidated line explaining all foreign income for tax purposes in these financial reports. In other words, investors have limited idea how 75% of Pfizer’s income might relate to foreign operations in a way that could pose risks with respect to tax costs or geopolitical concerns. Instead, Pfizer does provide some breakdown of its international operations based on the “development” of foreign nations in which it operates (versus, mostly geographic references in current SEC and FASB accounting guidance).
- **Understanding an Emerging Business Model** – Pfizer notes that “Emerging Markets” are an important component in Pfizer operations and may be subject to unique political and financial risks.<sup>36</sup> Given that the Pfizer vaccine is sold directly to governments and government-sponsored entities, these risks might be more relevant than in other multinational contexts. The term “Emerging Markets” includes, but is not limited to, the following markets: Asia (excluding Japan and South Korea), Latin America, Central Europe, Eastern Europe, the Middle East, Africa and Turkey. In other words, Pfizer does seem to be indicating that components of its growth and income strategy located in “Emerging Markets” may be vulnerable to unique valuation risks; however, Pfizer is not obligated to show investors additional details regarding the operations, revenue, and tax implications of each such jurisdiction in which it operates.
- **Tying out Loose Ends** – Based on this information we can see that growth in revenue across these markets was explosive and varied—but what about growth

in income?<sup>37</sup> Might acknowledged geopolitical and financial risks also call into question capital risks based on the ways that Pfizer moves revenues and profits across its extremely global operations? **PCbCR would provide investors with additional insight into these trends at Pfizer, and allow investors to better understand and price risk associated with a transformative period for the company and the world.**

## 2. Unilateral Tax Enforcement Considerations

In addition to multilateral tax reform efforts, unilateral tax enforcement and reform efforts are well documented in recent years, and add to the list of reasons why investors should have access to PCbCR information. One need only consider recent headline examples of tax-related risks to understand the magnitude of investor capital allocation concerns. After years of abusive transfer pricing practices across the globe, global tax authorities like the IRS are finally finding their footing in challenging these practices.

For example, in November 2020, a U.S. Tax Court ruled that Coca-Cola would owe the IRS \$3.3 billion in underpaid taxes and penalties due to transfer pricing schemes that the court deemed to be inconsistent

*As aggressive tax planning strategies by multinationals are being met by more aggressive enforcement and reform actions by governments acting unilaterally, PCbCR may provide needed clarity for investors seeking less risky returns.*

with applicable regulations, in shifting profits to lower-tax jurisdictions between the years 2007 and 2009. Coke could end up owing as much as \$12 billion in taxes if the IRS uses the same logic in analyzing later years of tax payments.<sup>38</sup> Across the Atlantic, McDonald's agreed to pay \$1.3 billion in fines and back taxes to French tax authorities in June 2022 to settle a long-standing tax dispute regarding its franchising fees. Allegedly, McDonald's had been routing these mobile fees through a Luxembourg subsidiary to avoid French taxes.<sup>39</sup>

As aggressive tax planning strategies by multinationals are being met by more aggressive enforcement and reform actions by governments acting unilaterally, PCbCR may provide needed clarity for investors seeking less risky returns. For example, many countries across the world are contemplating unilateral market-based taxes on revenues resulting from consumption of goods or services in the jurisdiction, such as digital service taxes.<sup>40</sup> It is currently not possible to estimate how these taxes might impact the bottom line

at many MNEs, as they do not report revenues on a country-by-country basis. Similarly, investor lack meaningful insight as to whether the MNEs they own may be at increased risk for tax enforcement actions due to offshore tax planning practices.

Additionally, the U.S. has already effectively enacted its own global minimum tax. In simplistic terms, the U.S. global intangible low-taxed income (or GILTI) creates an effective minimum offshore tax rate equal to around half the U.S. domestic rate, or 10.5%. This low rate, and other structural loopholes in the bill, encourage continued profit shifting.<sup>41</sup> Nonetheless, current country-by-country data can still provide a proxy into possible U.S. transfer pricing risk based on GILTI, or otherwise. Consider the following:

Figure 11. U.S. MNEs and Proxy Transfer-Pricing Risks Per IRS Country-by-Country Data<sup>42</sup>

Year	# of MNE Enterprise Groups with positive profit and ETR of less than 10%	% of MNE Enterprise Groups (\$850 mm revenue/year filing threshold)
2019	2,770	25.38%
2018	2,705	25.33%
2017	2,599	25.14%
2016	1,869	23.67%

This remarkably consistent data demonstrates that 25% of large U.S. MNE groups continue to have ETRs that are lower than 10%, which is the GILTI rate. There could be a variety of reasons for this; however, this might indicate that these MNEs may be subject to additional IRS scrutiny and increased enforcement risk to capital. But this rough proxy is just that. **Investors should not have to hide from looming threats cast by the shadows in aggregate IRS data.** By providing a clearer picture on tax-planning strategies, PCbCR might have allow investors to better allocate capital to avoid tax-enforcement related risks like those related to Coke’s U.S. Tax Court defeat. Further, filers would be encouraged to avoid risky behaviors that compromise returns on invested capital, creating less-volatile markets.<sup>43</sup>

### **C. Behind the Curtain: Material Geopolitical Risks stemming from Russia's Invasion of Ukraine and Beyond**

PCbCR is illuminating with respect to tax risks; however, recent global events highlight why information included in PCbCR reporting is also material for investors seeking to understand global

*In light of currently limited disclosure rules, many investors had no actual concept as to their potential capital exposure to the fallout from the Russian aggression.*

geopolitical risks associated with their investments. On February 24, 2022, an unprovoked Russia invaded Ukraine.<sup>44</sup> The global business community response to the invasion has been interesting to observe, with many large multinational companies quickly temporarily ceasing operations. Some have gone further, announcing an intent to sell and permanently abandon such operations.

While these announcements created certainty about the West's resolve to financially cripple the Russian regime, they rightly raised uncertainty for investors. In light of currently limited disclosure rules, many investors had no actual concept as to their potential capital exposure to the fallout from the Russian aggression. Disclosure provided by two filers, McDonald's and Royal Dutch Shell (Shell), demonstrate the critical information that investors should have access to on a routine filing basis.



## 1. McDonald's Corporation and a Material Russian Pause-Relevant Information

In the wake of the Russian invasion of Ukraine, McDonald's suspended operations in its Russian and Ukrainian owned and franchised stores on March 8, 2022.<sup>45</sup> Subsequently, McDonald's stated that it would seek to sell its Russian businesses and would exit the Russian market permanently.<sup>46</sup> Based on current SEC reporting rules, investors would have otherwise had no concept of how these decisions might impact McDonald's operations, results, or valuation. A search of McDonald's 10-K for "Russia" would in fact yield zero results. Instead, investors would have seen something like the following in McDonald's 10-K for 2021, filed on February 24, 2022 (*the day of the invasion*), detailing a comparison between U.S. and international revenues, operating income, assets, and high-level tax information:



Figure 12.<sup>47</sup>

Total revenues	\$	23,222.9	\$	19,207.8	\$	21,364.4
U.S.	\$	4,754.7	\$	3,789.1	\$	4,068.7
International Operated Markets		5,130.6		3,315.1		4,789.0
International Developmental Licensed Markets & Corporate		470.7		219.8		212.1
Total operating income	\$	10,356.0	\$	7,324.0	\$	9,069.8
U.S.	\$	21,280.3	\$	21,010.0	\$	21,376.9
International Operated Markets		24,186.1		24,744.0		22,847.5
International Developmental Licensed Markets & Corporate		8,387.9		6,872.8		3,286.4
Total assets	\$	53,854.3	\$	52,626.8	\$	47,510.8
U.S.	\$	940.7	\$	890.4	\$	1,480.5
International Operated Markets		1,050.6		731.5		886.6
International Developmental Licensed Markets & Corporate		48.7		18.9		26.6
Total capital expenditures	\$	2,040.0	\$	1,640.8	\$	2,393.7
U.S.	\$	840.7	\$	813.8	\$	730.2
International Operated Markets		726.4		678.5		669.3
International Developmental Licensed Markets & Corporate		301.0		259.1		218.4
Total depreciation and amortization	\$	1,868.1	\$	1,751.4	\$	1,617.9

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 McDonald's 2021 FORM 10-K

Figure 13.

### Income Taxes

Income before provision for income taxes, classified by source of income, was as follows:

In millions	2021	2020	2019
U.S.	\$ 2,413.9	\$ 1,390.4	\$ 2,159.1
Outside the U.S.	6,714.0	4,750.3	5,859.0
Income before provision for income taxes *	\$ 9,127.9	\$ 6,140.7	\$ 8,018.1

\* Income before provision for income taxes increased in 2021 due to stronger operating performance and recovery from the impact of COVID-19.

The provision for income taxes, classified by the timing and location of payment, was as follows:

In millions	2021	2020	2019
U.S. federal	\$ 887.6	\$ 554.1	\$ 521.8
U.S. state	228.1	119.1	194.7
Outside the U.S.	895.3	730.6	1,126.5
Current tax provision	2,011.0	1,403.8	1,843.0
U.S. federal	(177.4)	870.3	38.5
U.S. state	(24.1)	73.3	20.0
Outside the U.S.	(226.8)	(937.2)	91.2
Deferred tax provision	(428.3)	6.4	149.7
Provision for income taxes	\$ 1,582.7	\$ 1,410.2	\$ 1,992.7

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 McDonald's 2021 FORM 10-K

Figure 14.

The statutory U.S. federal income tax rate reconciles to the effective income tax rates as follows:

	2021	2020	2019
Statutory U.S. federal income tax rate	21.0 %	21.0 %	21.0 %
State income taxes, net of related federal income tax benefit	1.8	1.8	1.8
Foreign income taxed at different rates	0.9	0.4	1.6
Tax impact of intercompany transactions	0.1	2.1	—
Global intangible low-tax income ("GILTI")	0.3	1.2	1.3
Foreign-derived intangible income ("FDII")	(2.6)	(3.4)	(1.3)
U.S./Foreign tax law changes	(3.9)	(1.8)	—
Foreign tax credit redetermination regulations	—	—	(1.0)
Other, net	(0.3)	1.7	1.5
Effective income tax rates	17.3 %	23.0 %	24.9 %

SOURCE: UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549 McDonald's 2021 FORM 10-K

**Based on this information, investors would have little insight (and have historically had little insight) into any geopolitical risk presented as a result of the location of the markets in which McDonald's invests and generates revenue.**

Yet, McDonald's took a unique position to provide additional disclosure regarding its operations—not only in Ukraine and Russia—but globally in separate filings also made on February 24, 2022. Specifically, McDonald's detailed the store, sales, revenue and operating income impact of its Russian and Ukrainian operations, per the below Figure 15.<sup>48</sup>

Figure 15.

#### Supplemental Information on McDonald's Russia and Ukraine

For perspective, below is supplemental information on McDonald's Russia and Ukraine as of 12/31/2021:

	# of Restaurants	% Company-operated
Russia	847	84%
Ukraine	108	100%

For the full year 2021, Russia and Ukraine combined represented:

- ~2% of Systemwide Sales
- ~9% of Revenue, given the high percentage of company-operated restaurants relative to the System
- Less than 3% of Operating Income

SOURCE: Supplemental Information on McDonald's Russia and Ukraine Furnished on Feb. 24, 2022

McDonald's also presented additional information that expanded on their international operations, albeit it to a more limited extent, in other jurisdictions setting forth the number of operated and licensed store in every country in which it operates.<sup>49</sup> Not surprisingly, it seems McDonald's had this information at the ready—and as will be shown below, the invasion of Ukraine demonstrates why this information may be material in securities analysis. What is the SEC's reason for not having companies that already collect this information report it publicly when it can impact share valuation?

To see the arbitrary distinction created by the threshold that requires that a specific geographic area comprise more than 10% of the comparable component under current SEC guidance to require separate reporting, consider that the information made public by McDonald's on Feb 24, 2022, indicated that McDonald's has 4,395 licensed stores in China. That would comprise more than 10% of the 40,031 stores that McDonald's operates or licenses worldwide, but McDonald's does not report separately on its Chinese-related operations in its 10-K. Likely, this is may be due to technical reasons (the licenses don't comprise tangible assets or favorable exchange rates result in slightly lower revenues than 10% of global revenues). But in light of geopolitical concerns associated with operating in China, might certain investors want to price some risk into the enterprise value created by these assets? This could be done, for example, by discounting those streams of income to varying extents in either discounted cash flow analysis or multiples-based analysis consistent with below examples in this report, including the valuation carried out for McDonald's.





## **2. Coming out of its Shell: A Slow, but Informative Start**

Investors in Shell, on the other hand, would have had more advanced insight into Shell operations in Russia in light of additional mandatory and voluntary reporting regimes applicable to Shell, including its early adoption of PCbCR in line with GRI principles.<sup>50</sup> According to (Financial Accounting Standard) FAS 69,<sup>51</sup> companies registered with the SEC that have significant oil and gas operations are required to disclose the following as supplementary results of operations information in periodic reports, but not as a part of the financial statements:

- Revenues
- Production (lifting) costs
- Exploration expenses
- Depreciation, depletion, and amortization, and valuation provisions
- Income tax expenses
- Results of operations for oil and gas producing activities (excluding corporate overhead and interest costs).

This information should be disclosed in the reporting entities home country as well as “each foreign geographic area in which significant reserves are located. Foreign geographic areas are individual countries or groups of countries as appropriate for meaningful disclosure in the circumstances.” In practice, this geographic aggregation often results in reporting conducted on a continental basis.

Figure 16.

**Figure 16.**  
**Shell Subsidiaries Supplemental**

	Europe	Asia	Oceania	Africa	North America		South America	Total
					USA	Other (A)		
Revenue								
Third parties	767	2,104	589	1,540	1,008	753	567	7,328
Sales between businesses	2,879	6,792 (B)	3,366 (B)	1,816	5,239	943	4,656	25,691
Total	3,646	8,896	3,955	3,356	6,247	1,696	5,223	33,019
Production costs excluding taxes	2,023	1,811	1,040	1,064	2,615	735	936	10,224
Taxes other than income tax	64	389	93	245	64	—	1,494	2,349
Exploration	256	149	234	202	325	108	473	1,747
Depreciation, depletion and amortisation	3,618	2,120	10,178	2,589	7,927	2,147	6,282	34,861
Other costs/(income)	553	1,559 (B)	314 (B)	645	230	631	161	4,093
Earnings before taxation	(2,868)	2,868	(7,904) (B)	(1,389)	(4,914)	(1,925)	(4,125)	(20,255)
Taxation charge/(credit)	(423)	1,854	(3,175)	(104)	(790)	(449)	(300)	(3,367)
Earnings after taxation	(2,445)	1,014	(4,729) (B)	(1,285)	(4,124)	(1,476)	(3,825)	(18,868)

(A) Comprises Canada and Mexico.

Source: Shell Form 20-F FY 2020, Filed with the SEC

For example, the supplemental Oil and Gas Exploration and Production Activities data provided by Shell in its annual 20-F statement filed with the SEC for financial year 2020 includes disclosures of revenue, tax and expense information provided on a continental basis for every geography but the United States. (See Figure 16.) Yet, more fulsome PCbCR would be particularly helpful in understanding and quantifying political risk, such as in connection with potentially reduced earnings, cash flows and related tax considerations expected from sanctions on operations in Russia or with Russian companies due to its war on Ukraine.

On February 28, 2022, Shell announced its intention to exit its ventures in Russia with Gazprom and related entities. Subsequently, on March 8, 2022, Shell announced its intention to withdraw from its involvement in all Russian hydrocarbons in a phased manner, including shutting its service stations, aviation fuels, and lubricant operations in Russia.<sup>52</sup> While Shell itself refers to the potential material implications of the situation in Russia, its supplemental operations disclosures are too aggregated to provide a meaningful basis for investors to assess the impact of these risks on their own, which is the primary purpose of securities disclosures.

It happens that Shell is one of the few early adopters of voluntary PCbCR based on GRI 207.<sup>53</sup> Shell's 2020 Tax Contribution Report provides information about results and operations data that the company itself indicates may be impacted materially by its own divestment decisions and the ongoing uncertainty of operating in Russia.

Figure 17.

**Figure 17.**  
**Shell Subsidiaries Supplemental**

	Revenues			Profit before tax (\$)	Tax paid (\$)	Tax accrued (\$)	Tangible assets (\$)	Stated capital (\$)	Accumulated earnings (\$)	Number of employees
	Third-party revenues (\$)	Related-party revenues (\$)	Total revenues (\$)							
Russian	1,721,304,268	665,794,144	2,387,098,412	24,648,592	27,134,487	24,561,291	956,943,467	240,972,139	383,673,978	533

Source: Shell Total Tax Contribution Report, 2020

By simply comparing Figures 16 and 17, one can see that in FY2020 Russia represented about 27% of Shell's total Asian revenues (Asia total revenues \$8.896 billion and Russia total revenues of \$2.387 billion), or 1.3% of global revenues. Considering Shell's announcement of its intent to withdraw from its involvement in all Russian hydrocarbons, this additional insight into the company's operations should be of significance to investors. It is also worth noting that Shell has rejected arguments around costs or competitive concerns in promulgating this information, instead stating the following:<sup>54</sup>

*"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." - Shell's Executive Vice President, Taxation and Controller, testifying in the European Parliament.*

Shell is to be commended for disclosing its country-level tax payments and its support of extractive industries transparency regulations in the U.S., EU and Canada.

## D. Using Current Tax Information in Securities Analysis: A Square Peg in a Round Hole

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Challenges presented by a lack of public country-by-country data can confound securities analysis, potentially leading to greater volatility in markets and questionable results in corporate law—including in Delaware.

### 1. Quantitative Valuation Blindfolded

In the presence of information asymmetries, such as occurs with current income tax disclosures, investors might cling to any analysis they can in order to improve

*However, this approach also highlights that apparent tax stability, as seen in low variance in annual cash ETRs, can disguise other forms of turbulence.*

portfolio performance. In turn, this might lead to inefficient capital allocation and greater asymmetries. For example, without PCbCR, investors might consider simply avoiding companies with highly variable ETRs. In conducting a similar analysis, we determined that portfolio gains generally improved.<sup>55</sup>

However, this approach also highlights that apparent tax stability, as seen in low variance in annual cash ETRs, can disguise other forms of turbulence. For example, this approach potentially ignores certain contingent tax liability and deferred tax asset and liability balances, arguably encouraging inefficient capital allocation toward multinationals that otherwise report persistently and aggressively low ETRs that may be subject to later enforcement. In contrast, a volatile ETR may simply properly reflect prudent investment in R&D or renewable energy technologies, for example. PCbCR can help address these issues, giving investors better insight into what causes variable tax rates to avoid perpetuating potentially gimmicky or volatile investment strategies.





## **2. The Information is in the Computer: Dell and Delaware Law**

High-profile valuation battles in Delaware courts also demonstrate the critical need for PCbCR. Following a management-led take-private of Dell Inc. in 2013, certain shareholders challenged the share price offered on the grounds that it was too low.<sup>56</sup> Among other issues in composing expert valuations was a disagreement over the corporation's appropriate long-term tax rate—including whether it be the higher nominal U.S. corporate tax rate (based on the prior U.S. worldwide international tax system), which would lower the valuation of the company, or whether it should be a reduced amount, reflecting consistent international tax planning utilized by Dell.<sup>57</sup> These differing assumptions produced valuations that varied by billions of dollars.

Ultimately, the Delaware Chancery Court ruled in favor of the shareholders on this issue. The Delaware Supreme Court, in partially agreeing with the Chancery Court's discretion, acknowledged that it was improper to ignore Dell's historical international tax practices.<sup>58</sup> However, the Delaware Supreme Court also partially reversed and remanded the Delaware Chancery Court, stating that it was improper for the lower court to ignore the "market-based" price offered by management in a "robust and competitive" sales process.<sup>59</sup>

These somewhat competing conclusions that are now Delaware law may be challenging to reconcile in light of one key factor: the fact that public markets—including those not engaged in a sophisticated deal process—would have only had access to limited international tax information that was so critical to the Dell valuation. On the other hand, it is reasonable to expect that a well-functioning management team would have a much clearer idea of how tax planning might impact future cash-flows. With the 2017 tax reforms and the removal of the U.S. "worldwide" system of taxation, as well as additional opportunities for reform on the horizon, investors might be even more skeptical of valuations based on nominal U.S. corporate tax rates. It would be far more efficient for markets if the SEC were to require disclosure that would allow this information to be priced into the market currently—in recognition of prominent U.S. corporate law—rather than to encourage potential valuation discrepancies to clog up courtrooms.





### **III. The Materiality of PCbCR for Investors**

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The following analysis demonstrates how more detailed information relating to revenues, operations, and global tax strategy can materially impact securities valuation under both discounted cash flow or multiples-based modeling approach.

#### **A. Using Greater Tax Transparency to Understand Material Risks: DCF Based Analyses**

One common way that financial analysts value securities is through discounted cash flow (or DCF) modelling. Per its name, DCF modelling involves predicting future cash flows, adjusted for various fixed or other expected future costs, and then discounting those future cash flows based on the expected rate of return for shareholders. Taxes materially impact cash flows; you use cash to pay taxes, after all. Therefore, critical to any DCF model, might be information regarding the volatility and sources of volatility relating to tax costs for the companies that investors own.

Notably, these tax costs may apply in every single country that a multinational operates—and particular volatility in tax costs (thereby creating risk in securities pricing models) might stem from corporate income taxes across individual jurisdictions. Limited income tax disclosure provided under SEC rules cannot currently give insight into these risks, and therefore inhibits more accurate financial modelling and more responsive capital allocation decisions.

For example, an analyst might view a large stream of revenues into a country with very little real operations, taxed at a low effective tax rate, as a particularly risky stream of cash flows in light

of multilateral and unilateral tax enforcement and reform efforts described earlier in this report. If the SEC were to implement the recommendations in this report, investors would have access to additional insight into the country-by-country revenue, operations, and effective tax rates for multinationals, as well as a reconciliation of cash taxes paid with accrued taxes on a country-by-country basis, helping investors to better identify and price cash flow risks, including in DCF models. See Annex IV.

## **B. McDonald's Corporation and a Material Russian Pause—Financial Analysis**

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As discussed above, in connection with the Russian invasion of Ukraine, McDonald's disclosed certain information relating to Russian and Ukrainian operations in Figure 15, which was otherwise not previously included in public filings. This information detailed that Russian operations comprised "less than 3% of operating income."

Following McDonald's announcement that it would suspend its Russian and Ukrainian operations (and prior to McDonald's announcing the sale of its Russian operations), McDonald's Q1 Earnings Release, McDonald's provided additional clarification:

In this release, McDonald's clarified certain earnings impacts relating to the pause of Russian and Ukrainian operations, including a \$27 million cost for ongoing employee salaries not related to generating income, and a \$100 million sunk cost for inventory that would likely need to be disposed. Notably, the Q1 Earnings Release does not project for potential lost earnings as a result of the cessation of operations in Ukraine or Russia.

As this release was prior to the announcement of the sale of the Russian assets, and given the uncertain timeline of the Russian invasion, a reasonable investor might assume that the ongoing employee costs might continue indefinitely. Further, it might be appropriate to assume that, were McDonald's to not be forfeiting Russian income near 3% of overall income, McDonald's price might be more valuable than at present. Snapshot valuation methods (like multiples-based analysis) or forward-looking valuations (such as discounted cash flow analysis) prior to the announcement of such suspension might have overpriced McDonald's stock for some investors. However, investors that might have desired to price some geopolitical risk into McDonald's stock prior to the February 24, 2022 invasion of Ukraine would have been unable to accurately do so.

*Figure 18.*

Results for 2022 included the following:

- \$127 million, or \$0.13 per share, of pre-tax operating expenses incurred to support the Company's businesses in Russia and Ukraine. Included in this amount were \$27 million related to the continuation of employee salaries, lease and supplier payments as well as \$100 million for inventory in the Company's supply chain that likely will be disposed of due to restaurants being temporarily closed
- \$500 million, or \$0.67 per share, of nonoperating expense to reserve for a potential settlement related to an international tax matter

*Source: McDonald's Q1 2022 Earnings Release filed with the SEC*

In contrast, the value of McDonald's supplemental filings—which act as a proxy for the information that PCbCR might provide—is apparent. A simple multiples-based analysis can demonstrate the possible valuation impact of the long-term pause of Russian and Ukrainian operations, based both on ongoing employee retention costs, and forfeited operating income as of the March 7 date immediately prior to McDonald's announcing the temporary, yet indefinite suspension of Russian and Ukrainian operations.

- If operating income can also be considered a proxy for net income, then McDonald's might be losing \$33 million of quarterly net income due to the Russian cessation of operations. with strategic exit opportunities unknown (3% of near \$1,104,400,000 in quarterly net income);
- Based on the release, diluted shares as of March 7, 2022, would be near 746,216,000;
- The overall ongoing quarterly impact of the cessation in Russian and Ukrainian operations would be equal to a decrease in quarterly earnings per share equal to \$.08/share.
- As of March 7, 2022, publicly available data confirmed that the trailing twelve-months price-to-earnings ratio for McDonald's was equal to 22.34x.<sup>60</sup>
- Assuming that this is the price-to-earnings ratio a reasonable investor might adopt, then by multiplying the decrease in quarterly earnings by share (multiplied by four, to annualize the effect), by the price-to-earnings ratio, we can see that the potentially indefinite termination of Russian and Ukrainian operations might have a substantive negative impact on the value an investor might ascribe to McDonald's stock, equal to negative (\$7.20)/share.
- Based on McDonald's March 7 close price (\$224.33 per share), this impact could have a negative (3.21%) impact on a reasonable investor's valuation.

*In contrast, the value of McDonald's supplemental filings—which act as a proxy for the information that PCbCR might provide—is apparent.*

Investors do not necessarily make capital allocation decisions based on whether a security is priced within 10% of their estimated value; rather, they buy stocks that are undervalued based on detailed analysis. **A \$7.20 per share risk associated with Russian and Ukrainian operations should, by definition, be deemed material to investors.** McDonald's likely already provides the underlying information necessary to determine these risks to the IRS. **That**

McDonald's obviously had this information available makes it all the more vexing that investors are denied access to these numbers on a regular basis, including to price in geopolitical risks before catastrophic events occur.<sup>61</sup>

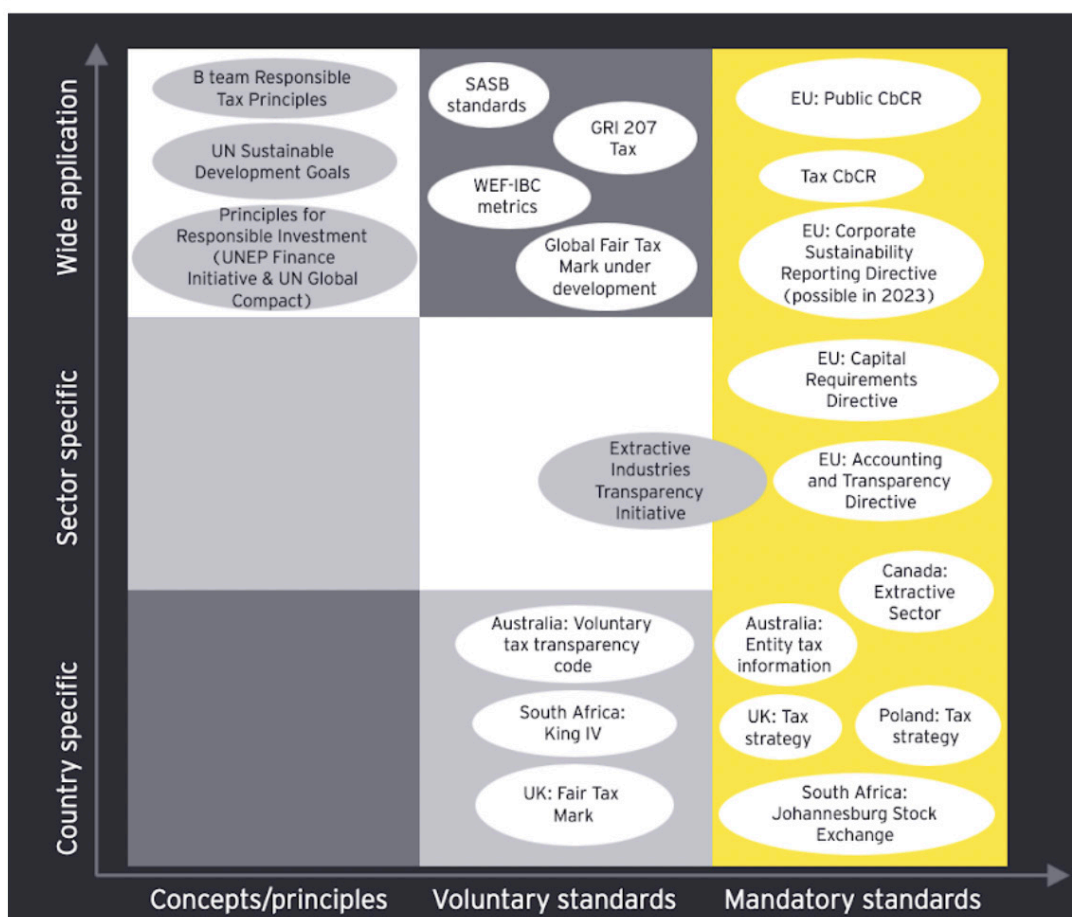


## IV. Moving Beyond The Voluntary

While investors wait on mandatory PCbCR, voluntary efforts have provided a preliminary—albeit inconsistent—means to adjust reporting companies to the disclosure process and provide some very limited data to investors and other stakeholders. The middle column in Figure 19 lists several of these voluntary frameworks, including the GRI standard. It is important to note, Global Reporting Initiative (GRI) Standard 207 has the most relevance to public disclosures based on the OECD’s BEPS 13 template. A more fulsome comparison of select standards is included in Annex IV.

Figure 19.

### Voluntary & Mandatory Tax Transparency Efforts



Source: EY<sup>62</sup>

The GRI is an independent, international organization that aims to set the global best practice standards for reporting publicly on a range of economic, environmental and social impacts. GRI

Standard 207 is likely the most prominent and robust voluntary tax transparency effort undertaken by a non-governmental organization.<sup>63</sup> GRI 207 was adopted in December 2019 after extensive input from companies, investors, and civil society, and applies to reporting after January 1, 2021. GRI 207 requires companies that have elected to endorse GRI Standards and identified tax as a material topic, to disclose management's approach to tax and country-by-country reporting. GRI 207 is to be applied in relation to sustainability reports published on or after January 1, 2021.<sup>64</sup>

At the time of adoption, GRI noted the value of tax transparency to investors and other stakeholders. Public reporting on tax:

- increases transparency and promotes trust and credibility in the tax practices of organizations and in the tax systems;
- enables stakeholders to make informed judgments about an organization's tax positions; and
- informs public debate and supports the development of socially desirable tax policy.<sup>65</sup>

Despite the merit of the GRI efforts, and the vision of those businesses voluntarily complying with the GRI Standard 207, the voluntary nature of these reports highlights the fundamental flaw with any voluntary reporting regime: they are voluntary. Although GRI Standard 207 is meant to be applied consistently, the natural result of a voluntary compliance regime is that those following the regime might interpret the voluntary standards flexibly. **For investors, asymmetries in information presented by voluntary reporting companies, as well as asymmetries comparing GRI voluntary filers and those companies who continue to file only limited SEC (or equivalent) required disclosures, create valuation challenges.**

The following is an assessment of the compliance of five such voluntary filers: BHP, Ørsted, Phillips, Shell and Vodafone. These five companies were chosen based on their leading compliance with GRI 207 as well as their distribution across various industries. As Figure 20 indicates, the compliance even of these leading companies is mixed and yields data that has persistent deficiencies that diminish its usefulness to investors both as individual disclosures and also part of any industry or economy-wide aggregation. For example, only three companies, Phillips, BHP, and Shell, provide corporate income tax accrued on profit and loss on a GRI compliant basis. Others are more selective.

Figure 20.

● - Compliance with requirement/ ● - Partial compliance/ ● - Out of compliance

GRI 207-4 Requirement	BHP Billiton	Ørsted	Phillips	Shell	Vodafone	Compliance
Names of the resident entities						5/5
Primary activities of the organization						5/5
Number of employees, and the basis of calculation of this number			(No relative basis or calculation given)			5/5
Revenues from third-party sales						5/5
Revenues from intra-group transactions with other tax jurisdictions				(Called related party revenues)	Provided for 2019 and 2018 in 2020 report in annex	4/5
Profit/loss before tax						5/5
Tangible assets other than cash and cash equivalents		(Called property, plan, and equipment, and inventory)				5/5
Corporate income tax paid on a cash basis						5/5
Corporate income tax accrued on profit/loss		(Income tax is calculated based on IFRS reporting standards instead of GRI methodology)				3/5
Reasons for the difference between corporate income tax accrued on profit/loss and tax due if the statutory tax rate is applied to profit/loss before tax.	Given for most (not all) countries that have recorded profits	(Global explanation provided, but not for each country)			Vodafone provides a narrative description of this where the information is deemed meaningful to understand contributions in each jurisdiction	2/5
<b>Compliance</b>	<b>9/10</b>	<b>8/10</b>	<b>10/10</b>	<b>10/10</b>	<b>7/10</b>	

A little more than a year after its January 1, 2021 reporting initiation, it seems voluntary compliance GRI 207 has been less than overwhelming. This survey of leading implementers of GRI 207-4 indicates that investors and other users of the resulting disclosures are being provided insufficiently consistent and comparable data to draw meaningful insight into the operations, revenues generated, and taxes paid by these companies across jurisdictions to date.

This also demonstrates challenges in proposed PCbCR standards that limit relevant information presented, such as those recently advanced in the EU and discussed further in the report or those being currently contemplated by FASB. At worst, more voluntary or incomplete PCbCR frameworks could be misleading and allow “greenwashing” with respect to international tax practices; at best,

*At worst, more voluntary or incomplete PCbCR frameworks could be misleading and allow “greenwashing” with respect to international tax practices; at best, these standards are well-intentioned but incomplete steps in the right direction.*

these standards are well-intentioned but incomplete steps in the right direction. For example, recent EU adoption of limited PCbCR standards for operations occurring in bloc nations or in “black” or “grey” listed jurisdictions<sup>66</sup> may fail to provide

the directly comparable disclosure standard necessary to be most valuable to investors. The political nature of EU “black” and “grey” lists may entirely ignore jurisdictions that are, in fact, well documented tax-havens based on the country-by-country data available from the IRS—like Switzerland.<sup>67</sup>

Similarly, FASB is considering including additional “country-by-country” information in the current rate reconciliation table provided in SEC filings.<sup>68</sup> This may be a productive first step toward PCbCR, but this approach also has inherent limitations for investors. These might include not truly understanding how evolving tax reform proposals (such as digital service taxes based on “market” revenues) might impact the bottom line for investments or understanding international tax enforcement risks when only reconciling to U.S. nominal corporate rates.<sup>69</sup> If trying to understand tax risks stemming from operations or sales in Europe or other jurisdictions, this myopic lens may not be particularly helpful. While disclosure might actually look more standardized under this approach than under PCbCR, ironically this would continue to create asymmetries in information with respect to underlying risks for investors. As different companies may be exposed to different tax risks based on their unique footprints, it is more detailed PCbCR information that is better capable of creating more symmetrical information for understanding comparative risks.

Additionally, adjusting the rate reconciliation table may raise challenging questions under the current U.S. international tax system, which does not apply on a country-by-country basis. For example, under the current U.S. minimum offshore tax regime, GILTI, foreign tax credits and income may be blended, raising a question as to how profits funneled to a tax-haven, but offset by tax credits generated in a non-tax haven would impact the rate reconciliation table.<sup>70</sup>

Annex V provides further detail on GRI 207 and the compliance of BHP, Ørsted, Phillips, Shell and Vodafone across its four reporting categories.



## V. Recommendations

**Given the authority already vested in the SEC to determine accounting disclosure rules for publicly listed companies, FACT recommends the following:**

1. The SEC should exercise its clear rulemaking authority under sections 12(b) and 13(b) of the Securities Exchange Act of 1934 to require PCbCR to be filed under Regulation S-X for identified filers.
2. The SEC PCbCR rule should require disaggregated information regarding related party revenues, third party revenues, net profit (loss), tangible assets, employee head count, corporate income cash taxes paid, and corporate income tax accrued, among other key items detailed in Annex IV of this report, on a jurisdiction-by-jurisdiction basis.
3. The SEC PCbCR rules should apply to all industries and jurisdictions, and PCbCR disclosure should be required pursuant to uniform standards for all applicable filers so that investors have access to data that is comparable and most useful in securities analysis.
4. PCbCR information should be presented with such additional disclosure as filers deem necessary to explain their tax contributions and their strategic operations, provided such disclosure does not otherwise violate any requirements under Rule 10b-5 or similar.
5. The SEC should also signal to the Financial Accounting Standards Board (FASB) that FASB should accelerate its U.S. generally accepted accounting principles (GAAP) tax disaggregation guidance project and make clear that greater country-by-country tax disaggregation should apply to all publicly filing companies, in a manner that supports and complements the SEC's PCbCR rulemaking.



## **VI. Conclusion**

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For investors, the lack of meaningful insight into tax costs, geopolitical, and other operational risks may result in inefficient capital allocation decisions and ultimately lead to increased market volatility.

Voluntary and partial standards, while admirable, are not necessarily adequate. Increasingly, investors are rightly demanding PCbCR to better understand on a country-by-country basis, the revenues, investments, workforce, and tax costs to capital of multinational enterprises to more efficiently allocate capital. Based on the current authority possessed by the SEC under the 1934 Securities and Exchange Act (and their reliance on FASB to promulgate GAAP), the time is now to advance a PCbCR rulemaking that advances international best practices in the United States. If our recommendations are implemented, the U.S. would be in front of international best practices and play a leadership role once again in creating more efficient markets, possibly also compelling EU to strengthen their new regime. In doing, the SEC would harmonize various global efforts that might create information asymmetries, providing investors with information necessary to make better informed decisions and decreasing potential market volatility.

## Endnotes

<sup>1</sup>As a starting point for these rules, such as with respect to timing of filings, and subject to the remaining recommendations, the SEC might look to the U.S. House of Representatives-passed Disclosure of Tax Havens and Offshoring Act (H.R. 3007) (“DTHOA”). The DTHOA would require the SEC, based on its current authority, to require publicly listed companies to engage in PCbCR, consistent with confidential country-by-country filing requirements in place under Treasury Department regulations.

<sup>2</sup>SEC PCbCR rules might consider additional disclosure categories for certain industries, to the extent useful in explaining certain jurisdictional tax rules (such as for extractive industries). These rules should complement, and not be treated as a substitute for, other reporting regimes such as under Section 1504 of the Dodd Frank Act.

<sup>3</sup>See, e.g., 2021 FASB Agenda Consultation Report, Financial Accounting Standards Board (Jun. 29, 2022), <https://www.fasb.org/Page/ShowPdf?path=2021%20FASB%20Agenda%20Consultation%20Report.pdf&title=2021%20FASB%20Agenda%20Consultation%20Report>.

<sup>4</sup>See, e.g., “Action 13: Country-by-Country Reporting,” Organization for Economic Cooperation and Development, <https://www.oecd.org/tax/beps/beps-actions/action13/>.

<sup>5</sup>See 26 C.F.R. Sec. 1.6038-4; IRS Form 8975.

<sup>6</sup>Included as Title V of the Corporate Governance Improvement and Investor Protection Act (H.R. 1187), the Disclosure of Tax Havens and Offshoring Act requires multinational corporations registered with the Securities and Exchange Commission (SEC) to disclose their taxes paid and other key financial information publicly on a country-by-country basis, in line with FACT’s recommendations in this report.

<sup>7</sup>In November 2021, the EU approved a new, albeit limited, public country-by-country reporting requirement, that will require EU-headquartered and non-EU large multinationals to provide disclosures regarding operations within the EU, “Black List” jurisdictions and certain “Grey List” jurisdictions. See EU Directive 2021/2101 (Nov. 24, 2021), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2021:429:FULL&from=EN>. Reporting will begin for fiscal years beginning on or after June 2024, and reports must be filed within 12 months of the date of the balance sheet of the financial statement in question (meaning that we will start to see reports in 2025 at the earliest). See *id.* Recently, public country-by-country reporting was part of the winning party platform of Antony Albanese, the newly-elected Prime Minister of Australia. Labors Plan to Ensure Multinationals Pay Their Fair Share of Tax, Australian Labor Party, <https://alp.org.au/policies/labors-plan-to-ensure-multinationals-pay-their-fair-share-of-tax>.

<sup>8</sup>See, e.g., “Amazon Investors Push Company on Global Tax Transparency,” FACT Coalition (May 27, 2022), <https://thefactcoalition.org/amazon-investors-push-company-on-global-tax-transparency/>; “Microsoft faces investor call to publish global tax affairs,” Reuters (Jun. 28, 2022), <https://www.marketscreener.com/quote/stock/CISCO-SYSTEMS-INC-4862/news/Microsoft-faces-investor-call-to-publish-global-tax-affairs-40841254/>.

<sup>9</sup>See “Letter to Ronald Mueller Re: Amazon.com Inc’s January 21, 2022 Letter,” U.S. Securities and Exchange Commission (April 5, 2022), <https://thefactcoalition.org/wp-content/uploads/2022/04/Amazon-Missionary-Oblates-1.pdf>

<sup>10</sup>See, Kevin Pinner, “Amazon Holders Urge SEC To Allow Vote on Tax Transparency,” Law360 (March 7, 2022), <https://www.law360.com/tax-authority/articles/1471277/amazon-holders-urge-sec-to-allow-vote-on-tax-transparency>

<sup>11</sup>See 17 C.F.R. §210.4-08(h).

<sup>12</sup>See “Investors Call on Financial Accounting Standards Board to Prioritize Public Country-by-Country Tax Reporting,” FACT Coalition (September 23, 2021), <https://thefactcoalition.org/investors-call-on-financial-accounting-standards-board-to-prioritize-public-country-by-country-tax-reporting/>; “66 Investors with \$2.9 trillion in Assets Under Management Show Support for the Disclosure of Tax Havens and Offshoring Act,” FACT Coalition (May 17, 2021), <https://thefactcoalition.org/64-investors-with-nearly-2-9-trillion-in-assets-under-management-show-support-for-the-disclosure-of-tax-havens-and-offshoring-act/>.

<sup>13</sup>15 U.S.C. §§ 78(l)(b)(1)(A), (J), (K), (L); 78(m)(a)(1). Notably, the very purpose of the 1934 Securities and Exchange Act contemplates the facilitation of federal tax laws—principally, as it relates to securities valuation in determining individual shareholder liability. [See Preamble to 1934 Act.] This coordination between tax and securities laws is relevant to ensuring efficient capital allocation markets, as well, though, and can be achieved via PCbCR without the SEC being asked to play “tax cop.”

<sup>14</sup>See *id.* Reg. S-X §210.4-08(h) requires disclosure of “(i) the components of income (loss) before income tax expense (benefit) as either domestic or foreign and (ii) the components of income tax expense. . . .” The current rule clarifies that each major component of U.S. federal, foreign, and other income taxes should be separately stated, further clarifying that amounts applicable to foreign or other income taxes which are “less than five percent of the total income before taxes or the component of tax expense, need not be separately disclosed.”

<sup>15</sup>See “Policy Statement: Reaffirming the Status of FASB as a Designated Private-Sector Standard Setter, Release No. 3308221,” U.S. Securities and Exchange Commission (Apr. 25, 2003), <https://www.sec.gov/rules/policy/33-8221.htm>; FASB “Accounting Standards Codification (ASC) Topic 740, Income Taxes. For those reporting according to International Financial Reporting Standards (IFRS), the guidance related to accounting for income taxes is included in “International Accounting Standard (IAS) 12 Income Taxes.” There are differences between GAAP and IFRS tax reporting in areas including the treatment of deferred tax assets and liabilities, but both account for only profit-based taxes. There are no specific standards that apply to the disclosure of other taxes.

<sup>16</sup>See 17 C.F.R. 210.4-08(h)(1) Note 1 (“Amounts applicable to United States Federal income taxes, to foreign income taxes and the other income taxes shall be stated separately for each major component. Amounts applicable to foreign income (loss) and amounts applicable to foreign or other income taxes which are less than five percent of the total of income before taxes or the component of tax expense, respectively, need not be separately disclosed. For purposes of this rule, foreign income (loss) is defined as income (loss) generated from a registrant’s foreign operations, i.e., operations that are located outside of the registrant’s home country.”).

<sup>17</sup>See OECD/G20 Base Erosion and Profit Shifting Project, Addressing the tax challenges arising from the digitalisation of the economy, Organization for Economic Cooperation and Development (2021), (p. 9), <https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf>.

<sup>18</sup>Kimberly Clausung, “Five Lessons on Profit Shifting from the U.S. Country by Country Data,” Tax Notes Federal 169(9), (p. 925-940), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3736287](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736287)

<sup>19</sup>Already in the U.S., domestic and foreign multinationals are subject to minimum taxes in the form of the global intangible low-income (GILTI) tax, and the Base Erosion and Anti-abuse Tax (BEAT). The GILTI effectively creates a minimum tax for offshore profits equal to half the domestic tax rate, subject to an exemption for certain profits equal to 10% of foreign tangible asset investment. 26 U.S.C. 951A; 250. Taxpayers subject to the GILTI may aggregate their foreign earnings and losses for purposes of GILTI, allowing taxpayers to blend foreign tax credits earned in high-tax jurisdictions with inflated profits in low-tax jurisdictions. The steeply discounted GILTI rate, ability to blend foreign income, and tangible asset exemption all contribute to continued profit-shifting and off-shoring incentives in the U.S. See, e.g., “Kim Clausung, Fixing Our America Last Tax Policy,” the Hill (Apr. 11, 2019), <https://thehill.com/opinion/finance/438274-fixing-our-america-last-tax-policy/>. Pursuant to the BEAT, multinationals operating in the U.S. may be subject to a minimum tax to the extent that certain payments made to related parties are deemed to erode the U.S. tax base pursuant to a formula that requires taxpayers to compare their taxable income regarding and disregarding such payments (the latter, at a discounted U.S. rate, and subject to certain exemptions and exclusions). 26 U.S.C. 59A.

<sup>20</sup>At the time this report was written, the lone holdout to enacting OECD-compliant reforms in the EU was Hungary, with other EU nations considering a variety of options to convince or circumvent Hungary’s opposition. Giorgio Leali, “EU can cut Hungary out of minimum tax rate deal, Bruno Le Maire says,” Politico EU (Jun. 30, 2022), <https://www.politico.eu/article/eu-to-implement-minimum-tax-rate-without-hungary-le-maire-says/>.

<sup>21</sup>This can, of course, be confirmed by legislation scoring provided by the Joint Committee on Taxation and the Congressional Budget Office in light of proposed reforms in the U.S. that would advance the OECD international minimum tax, such as in connection with the Build Back Better Act (H.R. 5376). See JCX-46-21 (November 19, 2021), <https://www.jct.gov/publications/2021/jcx-46-21/>.

<sup>22</sup>See “SOI Tax Stats – Country by Country Report,” U.S. Internal Revenue Service, <https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report>

<sup>23</sup>These seven jurisdictions were chosen due not only to their high profits and low ETRs, but also due to the fact that the aggregate CbCR information indicates that these countries could not possibly sustain meaningful operations for most large MNEs, based on comparatively minimal total employee numbers and tangible asset values. This is also supported by the high ratio of related party to third-party revenue set forth in the CbCR information. For these reasons, certain traditional tax havens, such as Singapore, Hong-Kong, and Ireland, have also been excluded from this list, but remain relevant in understanding increased tax costs for investors.

<sup>24</sup>See “SOI Tax Stats – Country by Country Report,” U.S. Internal Revenue Service, <https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report>

<sup>25</sup>This report did not review international CbCR data but it is worth noting that these numbers are relevant in light of global international tax reform discussions and may be relevant to the extent that any U.S. PCbCR regime covers all U.S. listed and SEC regulated multinationals (and not just U.S. headquartered multinationals reporting on IRS Form 9975). See

<sup>26</sup>The IRS has provided guidance in country-by-country reporting implementing regulations meant to lower the incidence of double-counting income booked by “parent” or “higher-tier” entities as a result of “dividend” or similar revenue; nonetheless, some double-counting may persist in profits (loss). See, e.g., 26 C.F.R. 1.6038-4(c)(3)(ii); JCT x-16R-21. Scoring from JCT and CBO regarding certain U.S. international tax proposals meant to curb tax avoidance via profit shifting and further the global minimum tax seems to closely align with country-by-country reporting, though, supporting the accuracy of this data and the adherence to regulations by multinational enterprises. See JCX-46-21 (November 19, 2021), <https://www.jct.gov/publications/2021/jcx-46-21/>.

<sup>27</sup>See supra note 24. A similar logic might apply here.

<sup>28</sup>See “Amazon Investors Push Company on Global Tax Transparency,” FACT Coalition (May 27, 2022), <https://thefactcoalition.org/amazon-investors-push-company-on-global-tax-transparency/>

<sup>29</sup>See Emma Agyemang, “SEC rules against Amazon in dispute with investors over tax transparency,” Financial Times (April 6, 2022), <https://www.ft.com/content/99481159-0f9a-416b-96cd-0012d0f2428e>

<sup>30</sup>See Kevin Pinner, “Amazon Holders Urge SEC to Allow Vote on Tax Transparency,” Law360 (March 7, 2022), <https://www.law360.com/tax-authority/articles/1471277/amazon-holders-urge-sec-to-allow-vote-on-tax-transparency>

<sup>31</sup>See Amazon’s 2021 Form 10-K. <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001018724/f965e5c3-fded-45d3-bbdb-f750f156dcc9.pdf>

<sup>32</sup>Amazon’s 2021 Form 10-K gives little additional insight into this huge number <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001018724/336d8745-ea82-40a5-9acc-1a89df23d0f3.pdf> (p. 64).

<sup>33</sup>See Matthew Gardner, “Amazon Avoids More Than \$5 Billion in Corporate Income Taxes, Reports 6 Percent Tax Rate on \$35 Billion of US Income,” Institution on Taxation and Economic Policy (February 7, 2022), <https://itep.org/amazon-avoids-more-than-5-billion-in-corporate-income-taxes-reports-6-percent-tax-rate-on-35-billion-of-us-income/>

<sup>34</sup>See Pfizer’s 2021 Form 10-K. [https://s28.q4cdn.com/781576035/files/doc\\_financials/2021/ar/PFE-2021-Form-10K-FINAL.pdf](https://s28.q4cdn.com/781576035/files/doc_financials/2021/ar/PFE-2021-Form-10K-FINAL.pdf)

<sup>35</sup>See id. at p. 73 (“The domestic loss in 2020 versus domestic income in 2019 was mainly related to the non-recurrence of the gain on the completion of the Consumer Healthcare JV transaction as well as higher asset impairment charges and higher R&D expenses. The increase in the international income was primarily related to the non-recurrence of the write off of assets contributed to the Consumer Healthcare JV as well as lower asset impairment charges and lower amortization of intangible assets.”)

<sup>36</sup>See id. At p. 15. “Some emerging market countries may be particularly vulnerable to periods of financial or political instability or significant currency fluctuations or may have limited resources for healthcare spending. As a result of these and other factors, our strategy to grow in emerging markets may not be successful, and growth rates in these markets may not be sustainable.”

<sup>37</sup>Revenue growth in 2021 for each category was as follows: U.S. (38.64%), Developed Europe (135.44%), Developed Rest of World (209.86%), and Emerging Markets (147.26%). Interestingly growth in property, plant and equipment (or tangible assets) was highest in the U.S. (9.38%) and Emerging Markets (18.66%), where revenue growth was large, but small compared to the colossal growth in the Developed Rest of World category, where tangible assets actually shrank (-15.99%). The extremely high growth in tangible assets in Emerging Markets could be due, in part, to the perverse incentive created by current U.S. international tax regimes in which GILTI (which has an offshore tangible asset exemption) and FDII (which is reduced by increased investment in U.S. tangible assets) encourage investment in tangible assets abroad for manufacturers on others. See <https://thehill.com/opinion/finance/438274-fixing-our-america-last-tax-policy/>.

<sup>38</sup> See Rubin, Richard. “Coca-Cola Improperly Shifted Profits Abroad, Tax Court Rules,” Wall Street Journal, November 19, 2020. <https://www.wsj.com/articles/coca-cola-improperly-shifted-profits-abroad-tax-court-rules-11605738514>; see also [https://www.ey.com/en\\_gl/tax-alerts/us-supreme-court-declines-to-hear-altera-case](https://www.ey.com/en_gl/tax-alerts/us-supreme-court-declines-to-hear-altera-case).

<sup>39</sup> “McDonald’s agrees to pay \$1.3 bln to settle French tax dispute,” Reuters (Jun. 16, 2022), <https://www.reuters.com/business/french-prosecutor-proposes-mcdonalds-pay-1245-bln-euros-settle-tax-dispute-2022-06-16/>.

<sup>40</sup> Broad-based consumption taxes, like Value-added taxes, have been around for years, but recent digital service taxes meant to specifically target in-scope digital activities in a country are more targeted to address perceived leniency in international tax norms that allow profit-shifting. The OECD Agreement is meant to deter these unilateral digital service taxes, instead reallocating taxing rights to certain “market” jurisdictions with respect to the most profitable companies in the world. Many nations have made clear that they will pursue DSTs if the OECD Agreement is not fully implemented; others (like Nigeria) have made clear that they will do so regardless of the OECD Agreement. Compare Digital Services Tax Act, available at <https://www.canada.ca/en/departement-finance/news/2021/12/digital-services-tax-act.html> (describing Canada’s DST), with Emele Onu, “Nigeria Shunned OECD-Backed Tax Agreement On Revenue Concern,” Bloomberg (May 24, 2022), <https://www.bloomberg.com/news/articles/2022-05-23/nigeria-shunned-oecd-backed-tax-agreement-over-revenue-concerns#:~:text=Nigeria%20Shunned%20OECD%20Backed%20Tax%20Agreement%20On%20Revenue%20Concern&text=Nigeria%20did%20not%20join%20an,losses%20to%20Africa's%20biggest%20economy> (describing why Nigeria rejected the OECD minimum tax deal).

<sup>41</sup> See *supra* note 19.

<sup>42</sup> See “Effective Tax Rate of Multinational Enterprise Sub-groups,” U.S. Internal Revenue Service, <https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report>

<sup>43</sup> For example, an academic study of European banks found that, after they were required to publish country-by-country reports from 2014 onwards, the banks exposed to tax havens increased their effective tax rate by 3.7 percentage points relative to the non-exposed banks. Michael Overesch, “Financial Transparency to the Rescue : Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance” (2020), <https://www.econbiz.de/Record/financial-transparency-to-the-rescue-effects-of-country-by-country-reporting-in-the-eu-banking-sector-on-tax-avoidance-overesch-michael/10012853394>.

<sup>44</sup> See Paul Kirby, “Why has Russia invaded Ukraine and what does Putin want?” BBC News (May 9, 2022), <https://www.bbc.com/news/world-europe-56720589>

<sup>45</sup> See “McDonald’s To Temporarily Close Restaurants & Pause Operations in Russia,” McDonald’s (March 8, 2022), <https://corporate.mcdonalds.com/corpmcd/en-us/our-stories/article/CompanyValues.Russia-update.html>

<sup>46</sup> See “McDonald’s To Exit from Russia,” McDonald’s (March 16, 2022), <https://corporate.mcdonalds.com/corpmcd/en-us/our-stories/article/ourstories.mcd-exit-russia.html>

<sup>47</sup> See 2021 Annual Report, McDonald’s (2022), <https://corporate.mcdonalds.com/content/dam/gwscorp/assets/investors/events-presentations/meeting-resources/MCD%202021%20Annual%20Report.pdf>

<sup>48</sup> See “Supplemental Information on McDonald’s Russia and Ukraine,” McDonald’s, <https://corporate.mcdonalds.com/content/dam/gwscorp/assets/investors/financial-information/Supplemental-Information/Russia%20and%20Ukraine%20Supplemental%20Schedule.pdf>

<sup>49</sup> See “Restaurants by Country 2021,” McDonald’s, <https://corporate.mcdonalds.com/content/dam/gwscorp/assets/investors/financial-information/Supplemental-Information/Restaurants%20by%20Country%202021.pdf>.

<sup>50</sup> For example, Shell is subject to EU transparency and accounting directives disclosures for extractives industry companies.

<sup>51</sup> See “Exhibit 99.4: Supplemental Unaudited Disclosures about Oil and Gas Producing Activities Required under United States Generally Accepted Accounting Principles,” U.S. Securities and Exchange Commission, <https://www.sec.gov/Archives/edgar/data/1088166/000108816614000008/fas69.htm>

<sup>52</sup> See “Shell publishes Annual Report and Accounts,” Shell (March 10, 2022), <https://www.shell.com/media/news-and-media-releases/2022/shell-publishes-annual-report-and-accounts.html>

<sup>53</sup> See “Our Tax Data by Country and Location,” Shell, <https://reports.shell.com/tax-contribution-report/2020/our-tax-data/our-tax-data-by-country-and-location.html>

<sup>54</sup> Shell’s Executive Vice President, Taxation and Controller, testifying in the European Parliament in favor of additional tax transparency.

<sup>55</sup> In an analysis of the Wilshire 5000, where investors simply removed the most egregious annual variances in ETRs (and added additional exposure to low variance companies to fill the gap), portfolio gains improved (e.g., 138 basis points over one year and 260 basis points over three years). A similar analysis performed on the Dow Jones Industrial Index bore comparable results. See Annex I for additional discussion.

<sup>56</sup> See *In re Appraisal of Dell Inc.*, C.A. No. 9322, 105 (Del. Ch. May 11, 2016).

<sup>57</sup> See *id.*

<sup>58</sup> *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd.* (Dell II), 2017 WL 6375829 (Del. Dec. 14, 2017).

<sup>59</sup> See *id.*

<sup>60</sup> See “McDonald’s P.E. Ratio,” YCharts, [https://ycharts.com/companies/MCD/pe\\_ratio](https://ycharts.com/companies/MCD/pe_ratio)

<sup>61</sup> Of course, the one-time impact of the lost inventory could further dampen McDonald’s value, but this analysis excludes this cost as non-routine. In contrast, a more fulsome analysis of the Q1 Earnings results for McDonald’s also demonstrates the potentially material impact of more detailed tax information. McDonald’s is facing a record-breaking French tax adjustment and seems to be adjusting for it accordingly in its financial earnings. Cf. “McDonald’s Reports First Quarter 2022 Results,” McDonald’s (April 28, 2022), <https://corporate.mcdonalds.com/content/dam/gwscorp/assets/investors/financial-information/earnings-release/Q1%202022%20Earnings%20Release%202099.1.pdf>; “France bills McDonald’s \$341 million for unpaid tax: report,” Reuters (April 19, 2016), <https://www.reuters.com/article/us-france-mcdonalds-tax/france-bills-mcdonalds-341-million-for-unpaid-tax-report-idUSKCN0XG2QS>. A review of historical McDonald’s filings might demonstrate regular and routine adjustments to earnings (both positive and negative) that might implicate one-time or more permanent changes to operating structure as it relates to cost of capital. As multiples-based analysis can be a snapshot, even the one-time hit in earnings of \$500 million for the particular tax dispute referenced could result in a negative \$5 per share decrease in stock value for McDonald’s based on a similar analysis to that discussed in the report, and the possibility of this being a permanent adjustment representing increased capital costs could have a clearly material impact on McDonald’s valuations.

PCbCR might have better illuminated these risks for investors.

<sup>62</sup> See “Tax policy matters: public tax transparency – from voluntary to mandatory,” EY, (November 9, 2021), [https://event.webcasts.com/viewer/event.jsp?ei=1502579&tp\\_key=60b9d7e05a](https://event.webcasts.com/viewer/event.jsp?ei=1502579&tp_key=60b9d7e05a)

<sup>63</sup> See GRI 207-Tax 2019, Global Reporting Initiative (2019), <https://www.globalreporting.org/standards/media/2482/gri-207-tax-2019.pdf>

<sup>64</sup> See Tax transparency in your sustainability report (GRI 207), EY (2020), [https://assets.ey.com/content/dam/ey-sites/ey-com/nl\\_nl/topics/assurance/assurance-updates/ey-tax-transparency-in-your-sustainability-report-gri-207.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/nl_nl/topics/assurance/assurance-updates/ey-tax-transparency-in-your-sustainability-report-gri-207.pdf)

<sup>65</sup> See id.

<sup>66</sup> Referring to the lists of non-cooperative jurisdictions (or non-cooperative jurisdictions committed to reform, in the case of they “grey” list) for tax governance purposes promulgated by the EU. See supra note 7.

<sup>67</sup> “Conclusions du Conseil relatives à la liste révisée de l’UE des pays et territoires non coopératifs à des fins fiscales,” Council of the European Union (February 24, 2022), <https://www.consilium.europa.eu/media/54471/council-conclusions-24-february-2022.pdf>

<sup>68</sup> See, e.g., 2021 FASB Agenda Consultation Report, Financial Accounting Standards Board (Jun. 29, 2022), <https://www.fasb.org/Page/ShowPdf?path=2021%20FASB%20Agenda%20Consultation%20Report.pdf&title=2021%20FASB%20Agenda%20Consultation%20Report>.

<sup>69</sup> See, e.g., 2021 FASB Agenda Consultation Report, Financial Accounting Standards Board (Jun. 29, 2022), <https://www.fasb.org/Page/ShowPdf?path=2021%20FASB%20Agenda%20Consultation%20Report.pdf&title=2021%20FASB%20Agenda%20Consultation%20Report>.

<sup>70</sup> See supra note 19 and accompanying text.



## Annex I

Since regulatory disclosures require little in the way of comment around the types of tax strategies companies pursue, analysts are largely “flying blind” and have been able to assess potential volatility only ex post, often through an assessment of the variability in historical cash ETRs. Above a certain threshold, high variability in tax rates can offset the value of tax avoidance, and at the extreme begin to undercut value.

In a study published in the *Journal of Accounting, Auditing & Finance*<sup>1</sup> researchers examined roughly 40,000 U.S. companies in the Compustat database from 1992 to 2014 for “tax avoidance”, the level of cash ETRs, and “tax risk”, the volatility of cash ETRs. Results of the study showed that a single standard deviation move in reducing a firm’s U.S. statutory rate (say, from 35% to 21%) led to an increase in firm value, as represented by Tobin’s Q, of 6.70%. However, if this decrease was combined with a single standard deviation increase in the volatility of the cash ETR it blunted the firm value increase by 33%. In addition, a full 2.5 standard deviation increase in volatility fully

Figure 21.

### Predictive Ability of Tax Avoidance and Tax Risk for Future Tax Avoidance and Tax Risk

Variable	DV = FUTURE_ TAXAVOID Coefficient t-stat	DV = FUTURE_ TAXRISK Coefficient t-stat	DV = FUTURE_ TAXAVOID Coefficient t-stat
INTERCEPT	-0.118** -21.82	0.137*** 40.20	-0.083*** -14.17
TAXAVOID	0.483*** 26.32	—	0.648*** 33.10
TAXRISK	—	0.210*** 11.57	-0.189*** -4.97
TAXAVOID × TAXRISK	—	—	-0.913*** -8.38
Year Fixed Effects	No	No	No
Industry Fixed Effects	No	No	No
SE Clustered by Firm	Yes	Yes	Yes
Observations	17,660	17,660	17,660
Adjusted R <sup>2</sup>	10.14%	2.50%	12.07%

Source: *Journal of Accounting Audit & Finance* 2019, Vol. 34(1) 151–176

offset the value of avoidance. The same study demonstrated persistence in both tax avoidance and tax risk, see Figure 22 below. Companies that tend to have volatile tax rates often see volatile

tax rates in the future as well.

As can be seen in the first two columns there are positive and highly significant coefficients on both “TAXAVOID” and “TAXRISK”. The third column illustrates that increases in tax risk – again, as defined by the five-year standard deviation of annual cash ETRs – dampens the positive association between current (and future) tax avoidance.

These results prompted us to consider the potential value in simply excising high tax risk from an investor portfolio when annual instances of cash taxes paid breached an appropriate standard deviation threshold. Could we then swap these volatile names and rebalance the portfolio with companies pursuing a more stable tax regime? What would the effect be on portfolio performance?

Our first attempt looked at the aggregate effect on a large index. We retrieved data from FactSet on the Wilshire 5000 index, a market-capitalization weighted index of around 3500 public companies in the U.S (in 1974 when the index was named it contained roughly 5000 companies). The Wilshire 5000 is considered one of the broadest measures of market activity and is referred to as a “total market index”.

We retrieved data for 10 years of “cash taxes paid” for over 2000 companies and then calculated the standard deviation of cash tax rates in five-year increments, starting with Year 10 to Year 5. For the final five years from Year 5 to Year 0 (the present) we calculated annual standard deviation values for cash tax rates. If any annual value exceeded a 2.5 standard deviation threshold, we eliminated it from the portfolio and swapped it with the lowest standard deviation value for the year (conducting an annual rebalancing of the portfolio over the final five years). Understandably, in any given year a company might have a one-off event that triggered a large change in tax rate for the year. However, given the persistence of tax risk seen in the study cited in Figure 21, our model pursued a risk management strategy of “zero tolerance”, swapping the offending company with its most stable counterpart (the smallest annual deviation firm). The results of this exercise can be seen in Figure 22 below.

Figure 22.

**Tax Risk Rebalance Wilshire 5000**

		<u>Year 1</u>	<u>Year 3</u>	<u>Year 5</u>
<b>Wilshire 5000</b>	<i>Equal Weight</i>	<b>3.48%</b>	<b>44.89%</b>	<b>74.62%</b>
<i>Portfolio Return</i>				
<i>45 companies replaced</i>	<i>Year 1 Rebalance</i>	4.86%	45.35%	74.29%
<i>19 companies replaced</i>	<i>Year 2 Rebalance</i>		45.83%	74.84%
<i>17 companies replaced</i>	<i>Year 3 Rebalance</i>			74.81%
<i>16 companies replaced</i>	<i>Year 4 Rebalance</i>			75.92%
<b>Rebalance Tax Risk</b>				
<i>Portfolio Return</i>	<i>Equal Weight</i>	<b>4.86%</b>	<b>47.49%</b>	<b>76.62%</b>

Source: FactSet, WKA Analysis: Limited portions of this report, including this Annex, were prepared with the help of W.K. Associates, Inc.

Virtually every year the portfolio is rebalanced to avoid companies with the highest potential tax risk, an incremental performance gain is achieved, which is striking given that fewer than 100 companies were replaced in an index of over 2020 constituents (roughly 5% turnover). Some limitations of the analysis include the fact that the results are equal weighted – larger companies factor more heavily in the actual returns for the Wilshire – and the exercise also assumes perfect hindsight. To partially remedy these issues, we attempted a similar analysis for the Dow Jones Industrial Index, a price-weighted index of 30 companies (all of which are also contained in the Wilshire 5000). Although not truly representative of the overall market, an analysis of the Dow is instructive due to the index’s concentration, where the effect of small changes is magnified.

Figure 23.

**Tax Risk Rebalance Dow Jones Industrial Average**

Years					
5	4	3	2	1	
103.97	68.97	45.40	47.98	4.08	DJIA Return
112.38	72.87	47.12	47.40	4.08	Tax Rebalanced Return
TRV	The Travelers Companies, Inc. REMOVED				
JPM	JP Morgan Chase & Co.				
PG	Procter & Gamble Company (The)				
MCD	McDonald's Corp			DOUBLED	
DIS	Walt Disney Company (The)				
MSFT	Microsoft Corporation				

Source: FactSet, WKA Analysis

Another limitation has to do with the information used. The data does not necessarily consider certain changes to contingent tax liabilities or deferred tax assets/liabilities. This might exclude a particularly problematic type of volatility related to aggressive tax planning and later enforcement activities depending on the nature and result of such enforcement activities (as well as the timing, based on investment model parameters).

Interestingly, an examination of the initial five-year standard deviation of cash taxes (Years 6-10) revealed no individual annual observations above the 2.5 threshold utilized in the Wilshire analysis. To proceed we simply summed the individual annual deviations for each company and removed the highest aggregate scores, or top decile (three companies), replacing them with the three lowest scores, or most stable firms (only rebalancing once and counting their returns twice for the final four years of the analysis). The results show an improvement in the three, four and five-year returns, improving 8% over the base portfolio by Year 5 (112% versus 104%). The results are intriguing and warrant further study. However, it's readily apparent that analysts would be wise to perform some flavor of this analysis to identify potential tax risks in their portfolio.

## Annex II - BEPS 13

In October 2015, the OECD's BEPS 13 Action Plan (BEPS 13) responded to these tax data sharing issues through its Country-by-Country Reporting Implementation Package. Under BEPS 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with data on the global allocation of income, profit, taxes paid and economic activity in every tax jurisdiction in which it operates. The data required under BEPS 13 is outlined in Figure 24 below.

Figure 24.

### Template for BEPS 13 Country-By-Country Disclosures

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group:										
Fiscal year concerned:										
Currency:										
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group:															
Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)												
			Research and Development	Holding/managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other <sup>2</sup>
	1.														
	2.														
	3.														
	4.														
	5.														

Source: OECD

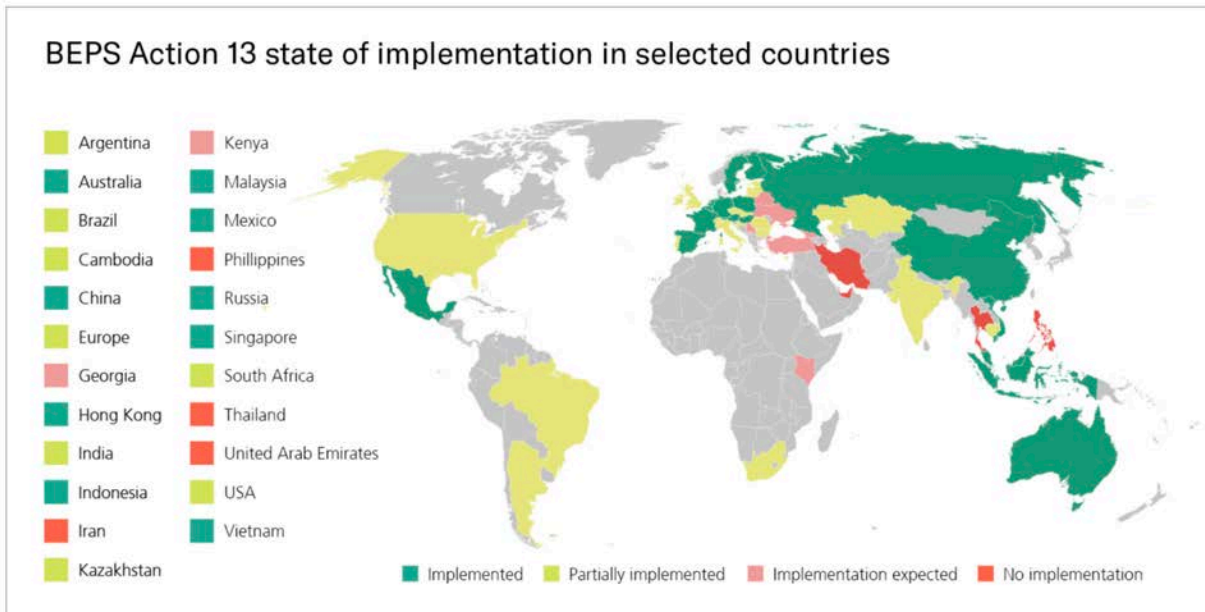


The initial purpose of CbC tax reporting was for the resulting data to be shared with tax administrations in implementing jurisdictions, as well as identifying and regulating high level transfer pricing and conducting BEPS risk assessments. This approach has proved successful. As of March 2022, 100 countries have implemented CbC reporting for tax administrators and more than 3,000 bi-lateral relationships exist for the confidential sharing of these reports between tax administrators. In total, 132 countries are evaluated in the BEPS 13 peer review process.<sup>2</sup>

## Annex III

Figure 25.

### BEPS 13 Implementation Status [March 2022]<sup>3</sup>



Source: OECD

#### U.S. & EU Implementation:

The United States began a rulemaking for the implementation of BEPS 13 in 2015. On June 30, 2016, the U.S. Treasury Department and the IRS published final regulations (TD 9773), which required annual CbC reporting through Form 8975<sup>4</sup> by U.S. persons who are ultimate parent entities of MNEs with annual revenue of \$850 million or more.<sup>5</sup>

Form 8975 is required to be filed with the income tax return of the parent entity when its reporting period ends. The IRS exchanges Form 8975 information only with tax authorities that have entered into bilateral “Competent Authority Arrangements.”<sup>6</sup> However, a U.S. MNE group’s information will only be exchanged with countries where the MNE does business (exchanged information is confidential and protected).

IRS Notice 2018-31<sup>7</sup> indicates that consultations with the U.S. Department of Defense, the Treasury Department and the IRS have indicated that national security interests may require modifications to Form 8975 reporting for U.S. MNE groups specified as “national security contractors.”<sup>8</sup> These modifications would absolve certain national security contractors from reporting CbC data to countries outside of the U.S. The changes to national security contractor

guidelines apply to reports filed after March 30, 2018. An IRS Notice functions only as guidance and does not amend relevant regulations. However, Notice 2018-31 indicates that the IRS is unlikely to sanction reports that withhold Form 8975 information, assuming it's verified that they are national security contractors. Interestingly, the IRS does not indicate how many or which specific companies qualify as national security contractors, and the IRS has not furthered the regulatory process to formally incorporate Notice 2018-31 into the regulations governing country-by-country reporting.

Nonetheless, for the majority of large multinational enterprises operating in the U.S. and filing pursuant to U.S. securities laws, these companies are already gathering and submitting country-by-country data in line with the information required to form the basis of any PCbCR regime—whether implemented by the SEC, Congress or otherwise. **This debunks concerns around compliance costs or other information burdens that may be raised by detractors, and indicates that investors could obtain a great wealth of valuable information for very little regulatory cost to large multinational enterprises.**

## Annex IV

Figure 26.

		GRI Tax Standard 207	EU	IRS	OECD	House-passed Disclosure of Tax Havens and Offshoring Act	FACT recommendations
Public		Yes	Yes	No	NO	Yes	Yes
Revenue Threshold		Voluntary	750,000,000 Euros	850,000,000 Dollars	750,000,000 Euros (or near equivalent amount in other currency)	Unspecified	Open to discussion; IRS or OECD Standard
Treatment of Foreign MNEs		N/A	Branches and some subsidiaries of foreign MNEs must report on behalf of the MNE.	Only domestic MNEs	Only domestic MNEs	MNEs registered with the SEC	MNEs subject to 34 Act
Permanent Establishments and Branches		Unspecified	Unspecified	Tax paid/accrued by branches broken out from larger MNE	Tax paid/accrued by branches broken out from larger MNE	Unspecified	Consistent with IRS
Information Aggregated or Disaggregated Between Constituent Entities		Disaggregated	Aggregated	Disaggregated	Aggregated	Disaggregated	Disaggregated consistent with IRS
Disaggregated by Country (CbCR)?		Yes	Disaggregated between E.U. Member States + E.U.-Identified Tax Havens, not other countries.	Yes	Yes	Yes	Yes
Information to Report		Information to Report					
Tax Jurisdictions		Yes	Listing E.U. Member States and E.U.-Identified Tax Havens.	Yes + Incorporation Jurisdictions when different	Yes	Yes + Incorporation Jurisdictions when different	Yes
List of Entities <sup>9</sup>		Yes	List of Entities in EU or EU-Identified Tax Havens	Yes	Yes	Yes	Yes
Activities		Yes	Yes	Yes	Yes	Yes	Not specifically listed, but would be included as best practices
Number of Employees		Yes - Method Unspecified	Yes - Full Time Equivalent	Yes - Full Time Equivalent	Yes - Full Time Equivalent	Yes - Full Time Equivalent	Yes - Full Time Equivalent
Total Revenue		Yes	Yes	Yes	Yes	Yes	Yes
Revenue from Third-Party Sales		Yes	No	Yes	Yes	Yes	Yes
Revenue from Intra-Party Sales		Yes	No	Yes	Yes	Yes	Yes
Profit/Loss Before Tax		Yes	Yes	Yes	Yes	Yes	Yes
Tangible Assets (not cash)		Yes	No	Yes	Yes	Yes	Yes
Stated Capital		No	No	Yes	Yes	Yes	Yes
Tax Paid (cash)		Yes	Yes	Yes	Yes	Yes	Yes
Tax Accrued		Yes	Yes	Yes	Yes	Yes	Yes
Accumulated Earnings		No	Yes	Yes	Yes	Yes	Yes
Narrative Report / Explanation for Differences?		Can explain difference between tax accrued and the statutory rate	Can explain difference between tax paid and tax accrued	Can describe overall business operations and structure of your group or an overall assumption or convention that you used which might have an effect on your report	Can provide explanation if it facilitates the understanding of the compulsory information provided in the Country-by-Country Report	Silent	Narrative encouraged consistent with other reporting requirements and securities laws

## **Annex V – GRI Compliance**

The assessment of GRI compliance in this study is based on comparison of the noted companies' more tax transparency reporting to the following four sections of the GRI 207 standard with an emphasis on GRI 207-4. The following is an outline of all four sections of GRI 207 as well as more detailed assessments of the compliance of BHP, Ørsted, Phillips, Shell and Vodafone.

### Disclosure 207–1 Approach to tax

- i. Whether the organization has a tax strategy and, if so, a link to this strategy if publicly available.
- ii. The governance body or executive-level position within the organization that formally reviews and approves the tax strategy, and the frequency of this review.
- iii. The approach to regulatory compliance.
- iv. How the approach to tax is linked to the business and sustainable development strategies of the organization.

### Disclosure 207–2 Tax governance, control and risk management

1. A description of the tax governance and control framework, including:
  - i. The governance body or executive-level position within the organization accountable for compliance with the tax strategy.
  - ii. How the approach to tax is embedded within the organization.
  - iii. The approach to tax risks, including how risks are identified, managed, and monitored.
  - iv. How compliance with the tax governance and control framework is evaluated.
2. A description of the mechanisms for reporting concerns about unethical or unlawful behavior and the organization's integrity in relation to tax.
3. A description of the assurance process for disclosures on tax and, if applicable, a reference to the assurance report, statement, or opinion.

Disclosure 207–3 Stakeholder engagement and management of concerns related to tax a. A description of the approach to stakeholder engagement and management of stakeholder concerns related to tax, including:



- i. The approach to engagement with tax authorities.
- ii. The approach to public policy advocacy on tax.
- iii. The processes for collecting and considering the views and concerns of stakeholders, including external stakeholders.

#### Disclosure 207-04 Public CbC Reporting

1. All tax jurisdictions where the entities included in the organization's audited consolidated financial statements, or in the financial information filed on public record, are resident for tax purposes.
2. For each tax jurisdiction reported in Disclosure 207-4-a:
  - i. Names of the resident entities.
  - ii. Primary activities of the organization.
  - iii. Number of employees, and the basis of calculation of this number.
  - iv. Revenues from third-party sales.
  - v. Revenues from intra-group transactions with other tax jurisdictions.
  - vi. Profit/loss before tax.
  - vii. Tangible assets other than cash and cash equivalents.
  - viii. Corporate income tax paid on a cash basis.
  - ix. Corporate income tax accrued on profit/loss.
  - x. Reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax.
3. The time period covered by the information reported in Disclosure 207-4.

The following are assessments of compliance with GRI 207 by BHP, Ørsted, Phillips, Shell and Vodafone using the most recent reporting, as noted.

#### **BHP**

BHP is a miner engaged in the exploration, development, production, processing and marketing of minerals. The company was founded in 1885 and is headquartered in Melbourne, Australia.

BHP's approach to tax is outlined in its "Economic Contribution Report 2021" and informed by its "Tax Principles" documentation. These documents have been endorsed by the BHP Board, including the Economic Contribution Report which is formally reviewed and approved by the Board annually.

The Risk and Audit Committee (RAC) assists the Board with the oversight of risk management

for BHP and this includes the oversight of tax risks. The Chief Financial Officer and the Group Tax Officer are accountable for the management of tax risk. BHP's 2021 Annual Report (section 1.9, "How we manage risk"), Economic Contribution Report 2021 (page 16), and Country-by-Country Report 2020 sets out the company's approach to tax risk management and governance, including the frameworks in place to identify, manage and monitor tax risks. In addition, BHP's Code of Conduct sets out the standards of behavior for employees where individuals are encouraged to report breaches of the BHP Code, including unethical or unlawful behavior relating to tax.<sup>10</sup> The following table summarizes BHP's efforts at compliance with GRI 207-4:

Figure 27.

● - Compliance with requirement/ ● - Partial compliance/ ● - Out of compliance

GRI 207-4 Requirement	BHP Billiton Compliance (2021 Economic Contribution Report)
Names of the resident entities	●
Primary activities of the organization	●
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	●
Profit/loss before tax	●
Tangible assets other than cash and cash equivalents	●
Corporate income tax paid on a cash basis	●
Corporate income tax accrued on profit/loss	●
Reasons for the difference between corporate income tax accrued on profit/loss and tax due if the statutory tax rate is applied to profit/loss before tax.	Given for most (not all) countries that have recorded profits

## Ørsted

Ørsted A/S engages in the provision of renewable energy solutions. The company was founded on March 27, 1972, and is headquartered in Fredericia, Denmark.

At Ørsted, taxes are overseen by the Board of Directors, which is accountable for tax policy. The responsibility for tax risk management lies with the CFO and is overseen by the Audit & Risk Committee. The company states it does not use secrecy jurisdictions or tax havens to avoid taxes. Further, if Ørsted establishes an entity in a low or no-rate jurisdiction, the company asserts it is for substantive and commercial reasons. Ørsted notes that taxes are a key consideration in the UN Sustainable Development Goals (SDGs), in particular target 16.6 on the development of effective, accountable, and transparent institutions.

Ørsted shares its involvement in the development of legislation concerning the Danish tax transparency rules, which was adopted in 2021, as evidence of its stakeholder engagement. The company also points out its involvement in meetings of the Confederation of Danish Industry's tax panel and participation in the "B Team's" responsible tax working group. The following table summarizes Ørsted's efforts at compliance with GRI 207-4:

Figure 28.

● - Compliance with requirement/ ● - Partial compliance/ ● - Out of compliance

GRI 207-4 Requirement	Ørsted Compliance (2021 Annual Report)
Names of the resident entities	
Primary activities of the organization	
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	
Profit/loss before tax	
Tangible assets other than cash and cash equivalents	(Called property, plant, and equipment, and inventory)
Corporate income tax paid on a cash basis	
Corporate income tax accrued on profit/loss	(Income tax is calculated based on IFRS reporting standards instead of GRI methodology)
Reasons for the difference between corporate income tax accrued on profit/loss and tax due if the statutory tax rate is applied to profit/loss before tax.	(Global explanation provided, but not for each country)

## Phillips

Koninklijke Phillips NV is a technology company that engages in the healthcare and lighting industry. The company was founded in 1891 and is headquartered in Amsterdam.

Phillips's tax standards<sup>11</sup> include acknowledgement the importance of tax collection to the macro-economic stability of the communities where it operates. The Phillips Board of Management and the Chief Financial Officer annually review, evaluate, and approve Philips' approach to tax. Further, the Audit Committee of the Supervisory Board regularly reviews controls and key tax-related matters. Phillips indicates its transfer pricing policies are aimed at appropriate, arm's-length

remuneration for activities among Philips related parties. Further, it shares that the company does not control legal entities in countries that do not share tax information under “Tax Information Exchange Agreements” and does not control legal entities without commercial and/or economic activities solely for the purpose of tax avoidance.

Phillips says its stakeholder dialogues include global initiatives with the OECD (Organization for Economic Cooperation and Development) and United Nations, as well as human rights groups. It highlights its compliance with the EU Directive on cross-border tax arrangements, DAC6, and its involvement in voluntary initiatives such as the Tax Transparency Benchmark of the Dutch Association of Investors for Sustainable Development (VBDO). The following table summarizes Philip’s efforts at compliance with GRI 207-4:



Figure 29.

● - Compliance with requirement/ ● - Partial compliance/ ● - Out of compliance

GRI 207-4 Requirement	Phillips Compliance (2021 Country Activity and Tax Report)
Names of the resident entities	
Primary activities of the organization	
Number of employees, and the basis of calculation of this number	(No relative basis or calculation given)
Revenues from third-party sales	
Revenues from intra-group transactions with other tax jurisdictions	
Profit/loss before tax	
Tangible assets other than cash and cash equivalents	
Corporate income tax paid on a cash basis	
Corporate income tax accrued on profit/loss	
Reasons for the difference between corporate income tax accrued on profit/loss and tax due if the statutory tax rate is applied to profit/loss before tax.	

## Shell

Shell Plc engages in the production of oil and natural gas. The company was founded in 1907 and is headquartered in London.

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, 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.”<sup>12</sup>

Shell publishes a Total Tax Contribution report, which includes disclosures related to its compliance with GRI 207.<sup>13</sup> Shell’s report includes country-by-country data for 99 countries and locations in which the company has a taxable presence.<sup>14</sup> The report shows aggregated country data for entities that are consolidated or proportionally consolidated in its Annual Report. It also includes data for the Shell share of non-consolidated joint ventures and associates. These data are reported in the country where the entity holding the shares is based. The following table summarizes Shell’s efforts at compliance with GRI 207-4:

Figure 30.

● - Compliance with requirement/ ● - Partial compliance/ ● - Out of compliance

GRI 207-4 Requirement	Shell Compliance (2020 Total Tax Contribution Report)
Names of the resident entities	
Primary activities of the organization	
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	(Called related party revenues)
Profit/loss before tax	
Tangible assets other than cash and cash equivalents	
Corporate income tax paid on a cash basis	
Corporate income tax accrued on profit/loss	
Reasons for the difference between corporate income tax accrued on profit/loss and tax due if the statutory tax rate is applied to profit/loss before tax.	

## Vodafone

Vodafone Group Plc engages in telecommunication services in Europe and internationally. The company was founded in 1984 and is headquartered in Newbury, the United Kingdom.

Vodafone has a public Tax Strategy<sup>15</sup> that is underpinned by its publicly available “Tax Principles” and supported by its “Tax Risk Management Policy” (first published in 2009). The Tax Policy is mandatory for all local operating markets and any associated legal entities. Vodafone also encourages joint ventures and associates to follow similar principles.

The Vodafone tax governance framework is overseen by the Group Executive Committee as well as the Audit and Risk Committee of the Vodafone Group Plc Board, with key issues reviewed at least twice a year. Vodafone’s tax principles include pledges to “pursue clarity and predictability on all tax matters”; to “not seek to establish arrangements that are artificial in nature, are not linked to genuine business requirements and would not stand up to scrutiny by the relevant tax authorities; and to “not artificially transfer profits from one jurisdiction to another to minimize tax payments.”

Vodafone’s stakeholder engagement includes participation in the European Roundtable of Industrialists (ERT) on finance and taxation as well as participation in the tax policy committees of Assotelecomunicazioni and the Confindustria Digitale in Italy, the UK government’s business forum on Business Tax and Competitiveness, the African Industries Tax Association, and various industry and economic forums in Tanzania and the Democratic Republic of Congo (DRC). Vodafone also acknowledges receipt of feedback on tax-related issues from Oxfam and Action Aid. The following table outlines Vodafone’s compliance with GRI 207-4.

Figure 31.

● - Compliance with requirement/ ● - Partial compliance/ ● - Out of compliance

<b>GRI 207-4 Requirement</b>	<b>Vodafone Compliance (2020 Taxation and Our Contribution to Public Finances)</b>
Names of the resident entities	
Primary activities of the organization	
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	Provided for 2019 and 2018 in 2020 report in annex
Profit/loss before tax	
Tangible assets other than cash and cash equivalents	
Corporate income tax paid on a cash basis	
Corporate income tax accrued on profit/loss	
Reasons for the difference between corporate income tax accrued on profit/loss and tax due if the statutory tax rate is applied to profit/loss before tax.	Vodafone provides a narrative description of this where the information is deemed meaningful to understand contributions in each jurisdiction



## Annex Endnotes

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<sup>1</sup>Katharine D. Drake et al, “Does Tax Risk Affect Investor Valuation of Tax Avoidance,” *Journal of Accounting, Auditing, and Financing* 34(1), (p. 151-176), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2374016](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2374016)

<sup>2</sup>See “Activated exchange relationships for Country-by-Country reporting,” Organization for Economic Cooperation and Development (March, 2022), <https://www.oecd.org/tax/automatic-exchange/country-by-country-exchange-relationships.htm>

<sup>3</sup>See “Action 13 Country-by-Country Reporting,” Organization for Economic Cooperation and Development, <https://www.oecd.org/tax/beps/beps-actions/action13/>

<sup>4</sup>See “National Security Considerations with Respect to Country-by-Country Reporting,” U.S. Internal Revenue Service, <https://www.irs.gov/pub/irs-drop/n-18-31.pdf>

<sup>5</sup>See “National Security Considerations with Respect to Country-by-Country Reporting,” U.S. Internal Revenue Service, <https://www.irs.gov/pub/irs-drop/n-18-31.pdf>

<sup>6</sup>A Competent Authority Arrangement is a bilateral agreement between the United States and the treaty partner to clarify or interpret treaty provisions. Competent Authority Arrangements also exist between the United States Internal Revenue Service and each United States Territory and Commonwealth tax agency to address issues of interest to the respective jurisdictions. More detail is available on the IRS website: <https://www.irs.gov/individuals/international-taxpayers/competent-authority-arrangements>.

<sup>7</sup>See “National Security Considerations with Respect to Country-by-Country Reporting,” U.S. Internal Revenue Service, <https://www.irs.gov/pub/irs-drop/n-18-31.pdf>

<sup>8</sup>A U.S. MNE group is a “specified national security contractor” if more than 50% of the U.S. MNE group’s annual revenue, as determined in accordance with U.S. generally accepted accounting principles, in the preceding reporting period is attributable to contracts with the Department of Defense or other U.S. government intelligence or security agencies.

<sup>9</sup>The SEC should make clear pursuant to public country-by-country rules or otherwise that all subsidiaries of a publicly traded entity must be disclosed, including due to capital risks created by aggressive tax planning, as well as potential corruption or other risks (including given the SEC’s instrumental role in policing Foreign Corrupt Practices Act violations), which could cost investors. See, e.g., A Taxing Problem, The FACT Coalition (2016), (p.17-19), <https://thefactcoalition.org/wp-content/uploads/2019/12/A-Taxing-Problem-for-Investors-FACT-SEC-CBCR-Report-Sept-2016-FINAL.pdf>. Alternatively, the SEC might consider simply updating Item 601 of Reg. S-K accordingly.

<sup>10</sup>BHP’s approach to stakeholder engagement is described in its Annual Report 2021 (1.13.6 Ethics and business conduct, 1.14 Section 172 Statement, 2.1.6 Stakeholder engagement, 2.1.15 Our conduct) and online at Sustainability approach – Our stakeholders, with commentary on tax matters provided in the Economic Contribution Report and Our Tax Strategy.

<sup>11</sup>2021 Country Activity and Tax Report, Philips (2022), <https://www.results.philips.com/publications/ar21/downloads/pdf/en/PhilipsCountryActivityAndTaxReport2021.pdf?v=20220316144456>

<sup>12</sup>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 (September 9, 2021) <https://www.europarl.europa.eu/cmsdata/239248/Alan%20McLean%20Statement.pdf>

<sup>13</sup>“Tax Contribution Report 2020,” Shell, <https://reports.shell.com/tax-contribution-report/2020/>

<sup>14</sup>“Introduction to Country-by-Country Reporting,” Shell, <https://reports.shell.com/tax-contribution-report/2020/our-tax-data/introduction-to-country-by-country-reporting.html>

<sup>15</sup>Taxation and our total economic contribution to public finances 2019 and 2020, Vodafone, (2021), <https://www.vodafone.com/sites/default/files/2021-10/vodafone-tax-report-19-20.pdf>



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