FACTCOALITION
Financial Accountability & Corporate Transparency

June 14, 2021

The Honorable Gary Gensler, Chair

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Public Input Welcomed on Climate Change Disclosures[1]

Dear Chair Gensler:

The Financial Accountability and Corporate Transparency (FACT) Coalition is writing to respond to the recent request by the Securities and Exchange Commission (the "Commission") for public input on climate change disclosures. We warmly welcome this opportunity to comment on the need for updating the securities disclosure regime to address the 21st century challenges and material risks investors and the public face.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global tax system that limits abusive tax avoidance and to curb the harmful impacts of corrupt financial practices.[2] While the FACT Coalition is broadly supportive of enhanced climate change disclosures, we write in response to question 15 regarding related disclosure issues "under the heading of environmental, social, and governance, or ESG, matters".

The FACT Coalition, of which I am executive director, has long advocated for corporate tax transparency, including mandatory requirements to compel multinational corporations to disclose their taxes paid and other key financial information publicly on a country-by-country basis – "public country-by-country reporting" (PCbCR). We believe a crucial component of a fair corporate tax system is transparency. As this letter will make clear, there is surging demand for mandatory tax reporting from investors and other market participants (e.g., credit rating agencies, index providers, lenders, customers) to reduce investor risk; promote fair, orderly, and efficient markets; and help protect the public interest.

[1] https://www.sec.gov/news/public-statement/lee-climate-change-disclosures
[2] A full list of FACT members is available at http://thefactcoalition.org/about/coalition-members-and-supporters/

Multinational Tax Avoidance and Multinational Corporate Tax Secrecy

Multinational corporations based in the United States and elsewhere have long used provisions in the global tax system to shift profits to low tax jurisdictions to avoid paying otherwise required taxes. IRS aggregate data show that U.S. multinationals booked 41 percent of their foreign profits in just 10 tax havens in 2017, a big leap from the 1990s.[3] Further, a 2018 report by the Institute for Taxation and Economic Policy showed 90 of the Fortune 500 companies paid nothing in tax; another 50 paid between 0 and 5 percent.[4]

Globally, a 2020 "State of Tax Justice" report by the Tax Justice Network estimates that tax havens have cost governments between $245 billion annually in lost revenue from corporate taxation.[5] According to one academic study, profit shifting by multinational corporations costs the U.S. alone $77 billion in lost tax revenue annually.[6] Recent changes to the tax code have also incentivized companies to move real assets and jobs offshore for tax purposes, undermining the U.S. economic recovery. In the developing world, multinational tax avoidance drains resources, making it harder for governments to grow sustainable economies, respond to national crises like the COVID-19 pandemic, and reduce dependence on the U.S. and other aid donors. Revenues lost by both developed and developing countries could be used to invest in infrastructure, climate mitigation and adaptation, and other public goods that are crucial elements of a stable operating environment for investors and multinational companies.

Addressing Investor Risk through Public Country-by-Country Reporting (PCbCR)

Multinational tax avoidance and profit shifting have risen to the top of the public policy agenda in the U.S. and other jurisdictions. Not only does tax avoidance expose corporations to the risk of increased tax enforcement, it also exposes them to changes in tax law. The recent declaration by G7 finance ministers agreeing on a global minimum effective corporate income tax, as well as the Biden Administration's "Made in America Tax Plan", among other potential changes, show that investors may be materially impacted by changes to international tax laws affecting their holdings.[7]

Information on a company's tax position and strategy are key for investor analysis. Without

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[3] Internal Revenue Service, "Table 1A: Country-by-Country Report (Form 8975): Tax Jurisdiction Information (Schedule A: Part I) by Major Geographic Region and Selected Tax Jurisdiction, Tax Year 2017", https://bit.ly/3dEQfmi.

[4] Matthew Gardner, Lorena Roque, Steve Wamhoff, "Corporate Tax Avoidance in the First Year of the Trump Tax Law", *Institute on Taxation and Economic Policy*, December 16, 2019; https://itep.org/corporate-tax-avoidance-in-the-first-year-of-the-trump-tax-law/.

[5] Tax Justice Network, The State of Tax Justice 2020. https://taxjustice net/reports/the-state-of-tax-justice-2020/

[6] Clausing, Kimberly. Five Lessons on Profit Shifting from the U.S. Country by Country Data, Tax Notes Federal, 169(9). 925-940, Nov. 2020. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736287

[7] See G7 Finance Ministers Communique https://home.treasury.gov/news/press-releases/jy0215 and the "Made in America Tax Plan" https://home.treasury.gov/system/files/136/MadeInAmericaTaxPlan_Report.pdf

public country-by-country reporting, investors are essentially "flying blind" and have no way to analyze the tax avoidance and profit shifting strategies of their holdings or how potential changes in tax rules may affect their returns to investors.

To protect and inform investors and other market participants; promote fair, orderly, and efficient markets; and protect the public interest, the Commission should issue a rule to require public companies to report several tax and tax-related items on a country-by-country basis including:

- revenues generated from transactions with other constituent entities;
- revenues not generated from transactions with other constituent entities;
- profit or loss before income tax;
- total income tax paid on a cash basis to all tax jurisdictions;
- total accrued tax expense recorded on taxable profits or losses;
- stated capital;
- total accumulated earnings;
- total number of employees on a full-time equivalent basis;
- a complete list of subsidiaries; and
- net book value of tangible assets, which, for purposes of this section, does not include cash or cash equivalents, intangibles, or financial assets.[8]

As a new report from the Center for American Progress makes clear, the Commission "has the ability and responsibility to require disclosures, including ESG-related disclosures, that would further its mission to protect investors; promote more fair, orderly, and efficient markets; promote capital formation; and protect the public interest."[9] This rule would ensure investors are provided with enough information to discern if the companies they are invested in are participating in corporate tax avoidance schemes, including artificially moving profits to low tax

[8] For additional information, see Gellasch, Tyler, and Reiners, Lee. "From Laggard to Leader: Updating the Securities Regulatory Framework to Better Meet the Needs of Investors and Society", A report from the Global Financial Markets Center at Duke Law, February 2021. https://web.law.duke.edu/sites/default/files/centers/gfmc/From-Laggard-to-Leader.pdf

[9] Thornton, Alexandra, and Gellasch, Tyler. "The SEC Has Broad Authority To Require Climate and Other ESG Disclosures", Center for American Progress, June 10, 2021. https://www.americanprogress.org/issues/economy/reports/2021/06/10/500352/sec-broad-authority-require-climate-esg-disclosures/

jurisdictions ("tax havens"). Investors need greater transparency of multinational corporate tax practices to assess a company's financial, reputation and economic risks; gauge their level of risk tolerance; and make informed investment decisions. Information would also allow investors to engage with companies about their global tax strategies and degree of risk tolerance. Governments internationally are increasingly taking steps to close off multinational tax avoidance strategies and to increase tax enforcement. Without adequate information, investors may be unaware that companies are taking tax shortcuts that provide modest-short term gains but in the long-term, create uncertainty, instability, and damage the companies' long-term value.

Risky tax avoidance strategies can negatively impact companies and affect investors. For example, last November, a U.S. tax court said that Coca-Cola would owe the Internal Revenue Service (IRS) $3.3 billion after getting caught on transfer pricing schemes to shift profits to lower-tax jurisdictions between the years 2007 and 2009.[10] In February, the company warned shareholders the company may be liable for as much as $12 billion in taxes if the IRS uses the same logic in analyzing later years of tax payments.[11] Tax cases can take years to litigate and tie up corporate profits, creating uncertainty for investors over an extended period.

Growing Investor, Lawmaker, Industry, and Public Support for Increased Tax Transparency

Recent years have seen a growing trend to increase mandatory and voluntary PCbCR, including from investors, lawmakers, the public, and some multinationals companies themselves.

Investors are increasingly taking note of the material risks posed by aggressive tax avoidance strategies. In 2019, Investors representing over $1 trillion in assets under management told the Financial Accounting Standards Board (FASB) that they want PCbCR included in an update to US accounting standards to help them assess these risks.[12] In the letter, the investors noted that:

> There are numerous recent examples of multinational corporations at odds with tax authorities — examples with which the Board is no doubt quite familiar, including Amazon, Apple, Caterpillar, Chevron, Facebook, Google, Hewlett-Packard, McDonald's, Microsoft, Nike, Shell, Starbucks, and many other multinationals. The evidence strongly suggests a growing trend toward government crackdowns on aggressive tax planning used by companies, not only to minimize their tax liability, but also to achieve hidden competitive advantages and even generate profits

[10] 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

[11] The Coca-Cola Company. "Coca-Cola Reports Fourth-Quarter and Full Year 2020 Results", February 10, 2021. https://www.coca-colacompany.com/press-releases/coca-cola-reports-fourth-quarter-2020-results

[12] The FACT Coalition. "Investors Representing More Than $1 Trillion in Assets Under Management Sent A Letter to FASB Supporting Country-by-Country Reporting", May 31, 2019.

https://thefactcoalition.org/investors-representing-more-than-1-trillion-in-assets-under-management-sent-a-letter-to-fasb-supporting-country-by-country-reporting/

> through tax refunds and other tax benefits. Evidence also shows that when governments take action against high-risk corporate tax practices, the financial consequences for the affected corporations can be severe. Without adequate information, investors may be unaware that companies are taking tax risks that provide modest short-term benefits but create uncertainty and instability, ultimately affecting longer- term value.

More recently, investors worth trillions in assets under management provided submissions to an OECD consultation process in 2020 calling for PCbCR. In one submission, a group of investors told the OECD:

> We believe it is time that members of the OECD Inclusive Framework move at all deliberate speed towards full publication of large companies' CbC reporting to provide us and other investors the information we need to make sound decisions when evaluating a corporation's ongoing profitability and financial risk on a country-by-country basis. This is an important strategic and policy matter for investors interested in long-term value creation.[13]

These investor submissions demonstrated that they are increasingly aware of the evidence that shows they bear the risks of companies engineering lower effective tax rates but receive no compensating return. One academic study demonstrated that, "allowing for industry norms and a host of firm characteristics, companies with lower effective tax rates have significantly higher levels of stock market risk."[14]

Investors have also called on lawmakers in the European Union and the U.S. Congress to enact strong PCbCR requirements. In the EU, PCbCR requirements have been in place for several years on the banking sector and, according to academic research, there has been significant changes in the tax behavior of covered banking institutions and they paid more taxes than before public Country by Country Reporting measures were introduced.[15] Earlier this month, negotiations between the European Parliament, Council, and Commission reached an agreement to expand PCbCR across all industry sectors and to require reporting across all EU member countries, the first time a jurisdiction has agreed to require a degree of PCbCR. In advance of the agreement, **investors with more than $5.6 trillion in assets under management** called on the EU to implement full, global PCbCR.[16] In the letter, the investors argued that full PCbCR will enable investors to: "better assess tax risks and opportunities in their portfolio and provide visibility of high-risk transactions; examine the economic scale of operations in different jurisdictions, validate companies' commitments against tax avoidance and identify those that are

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[13] "Investors Demand OECD Tax Transparency", Tax Justice Network, March 19, 2020. https://taxjustice net/2020/03/19/investors-demand-oecd-tax-transparency/

[14] Brooks, Chris, et al. "Do Investors Care About Corporate Taxes?", Journal of Corporate Finance, June 2016.

[15] Michael Overesch, and Hubertus Wolff, 'Does Country-by-Country Reporting Alleviate Corporate Tax Avoidance? Evidence from the European Banking Sector' (2018). https://ssrn.com/abstract=3075784 or http://dx.doi.org/10.2139/ssrn.3075784

[16] Principles for Responsible Investment, "Public Country-by-Country Reporting Requirements in the EU", May 26, 2021. https://dwtyzx6upklss.cloudfront net/Uploads/u/m/t/investorsignonletteronpubliccbcr_signatories_final_758353.pdf

ahead of the curve in terms of corporate tax responsibility; and raise questions with companies where tax structures and strategies do not align with economic value generated and therefore, facilitate more responsible corporate behavior."

In the U.S., Congress is considering requiring the Commission to mandate PCbCR for multinational companies through the Disclosure of Tax Havens and Outsourcing Act.[17] This legislation, introduced in both the House and Senate, has already passed out of the House Financial Services Committee, and is expected to receive a floor vote soon as part of a package of ESG disclosure requirements legislation. At the time of the introduction of the legislation, **investors with close to $2.9 trillion in assets under management** wrote to Congress urging quick movement on the legislation.[18] As the investors note in their letter:

> Investors require income and tax information at the country-by-country level to better understand a company's financial, reputational, and economic risks to make informed investment decisions. With global momentum growing to significantly change how multinational corporations are taxed – including through the Administration's tax change proposals and the OECD negotiations – investors now, more than ever, need information to inform them on how their holdings may be affected by changes to U.S. tax law … Currently, companies have access to revenue, profit, tax, and other information on a country-by-country level that investors do not have, putting their funds at risk.

Members of the small business community, along with a broad range of civil society and labor organizations, support PCbCR. A letter from U.S. small business groups notes that multinational companies can take advantage of tax avoidance strategies that they are not able to use.[19] "A lack of transparency in tax data likewise presents a major roadblock to better understanding how tax policies impact differing constituencies. We cannot even engage in an informed discussion. Multinational companies rely on the opacity of basic financial information to shift the tax burden to their competitors in the small business community, among others. What little information we do have suggests there is an enormous imbalance."

Beyond mandatory PCbCR approaches, on January 1 the Global Reporting Initiative (GRI), an "international independent standards organization that helps businesses, governments and other organizations understand and communicate their impacts on issues such as climate change, human

[17] Senator Chris Van Hollen, "Van Hollen, Axne Introduce Bicameral Legislation to Provide Transparency on Corporate Use of Tax Havens, Offshoring of Jobs", May 11, 2021. https://www.vanhollen.senate.gov/news/press-releases/van-hollen-axne-introduce-bicameral-legislation-to-provide-transparency-on-corporate-use-of-tax-havens-offshoring-of-jobs

[18] The FACT Coalition, "66 Investors with $2.9 trillion in Assets Under Management Show Support for the Disclosure of Tax Havens and Offshoring Act", 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/

[19] Letter from the American Sustainable Business Council, Main Street Alliance, and Small Business Majority. https://thefactcoalition.org/small-businesses-seek-increased-competition-with-disclosures-of-tax-havens-and-offshoring-act/

rights and corruption" enacted a new tax reporting standard, the first "global reporting standard that supports public disclosure of a company's business activities and tax payments on a country-by-country basis".[20] The adoption came after a broad consultation process received a flood of supportive comments from investors with trillions of dollars in assets under management, civil society, Members of Congress, and some large businesses. While GRI's standards are technically voluntary, 75 percent of the world's largest companies that report their sustainability results use the GRI Standards — while 62 countries have policies that reference or require the use of the GRI Standards for sustainability reporting.

Large multinational companies are also showing the way through voluntary PCbCR disclosures. In 2019, Shell, the giant fossil fuel multinational, started issuing public country-by-country reports[21], leading the Wall Street Journal to hail "the beginning of the end of tax secrecy".[22] Other major multinationals, such as Vodafone, mining giants BHP Billiton and Anglo American, Spanish oil multinational Repsol, and Danish energy company Orsted have followed suit.[23] Many multinationals are anticipating that public country-by-country reporting requirements will soon come into force. A 2020 survey by Deloitte found that over 70% agree or strongly agree that public reporting of country-by-country information will occur over the next few years.[24]

The Benefits Outweigh the Costs

Under the existing G20/OECD Inclusive Framework, governments have already agreed to require the largest multinational companies to report much if not all the information that would be included in a Commission rule on tax reporting at a country-by-country level to privately to tax authorities. In the US, the IRS is already receiving country-by-country reports from multinational companies with revenue above $800 million per year. By utilizing an existing reporting framework, the reporting that could be required by a Commission rule, and that is required in the Disclosure of Tax Havens and Offshoring Act, would minimize costs or other burdens on multinational businesses. As described above, the benefits in terms of material information to investors and other market participants, such as investor analysts, credit rating agencies, index providers, lenders, and customers would be substantial. These disclosures would also benefit the public interest as government policy makers, such as those in the US Congress and Treasury

[20] Global Reporting Initiative, "Topic Standard Project for Tax", https://www.globalreporting.org/standards/standards-development/topic-standard-project-for-tax/

[21] Royal Dutch Shell, Tax Contribution Report, 2018. https://reports.shell.com/tax-contribution-report/2018/servicepages/downloads/files/shell_tax_contribution_report_2018.pdf

[22]Toplensky, Rochelle. "The Beginning of the End of Tax Transparency", Wall Street Journal, December 20, 2019. https://www.wsj.com/articles/the-beginning-of-the-end-of-tax-secrecy-11576837708

[23] BHP Billiton, Economic Contribution Report 2020. https://www.bhp.com/our-approach/operating-with-integrity/tax-and-transparency/

[24] Deloitte, "Finding opportunity in the midst of uncertainty: Deloitte's 2020 global survey results on the OECD's Base Erosion and Profit Shifting (BEPS) initiative and the next wave of Global Tax Reset", June 2020. https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-beps-survey-2020-report.pdf

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Department, would be able to use disclosure to, for example, examine the effect of changes in the tax law on corporate behavior, including tax avoidance strategies.

Tax Disclosures are a Necessary Complement to Climate Disclosures

Tax disclosures are a necessary complement to climate disclosure and the need for society to address the climate crisis in at least two important ways.

First, investors are increasingly scrutinizing their portfolios to better understand climate risks and questionable or unsustainable tax treatment. When assessing potential climate risk related costs for fossil fuel companies, investors need a total picture of financial, economic, geopolitical, and reputational considerations facing such companies. Public country-by-country reporting by fossil fuel companies would allow investors, investor analysts, and other stakeholders to assess the extent to which tax avoidance and profit shifting contribute to the balance sheet of these companies.

Second, public country-by-country reporting would shine a light on the tax avoidance behavior of fossil fuel companies as well as other industries and contribute to an informed discussion on ways to minimize tax avoidance strategies and a global "race to the bottom" on corporate taxation. Increased government revenues from corporate taxation can be used to address and mitigate the impacts of climate change and to make the investments necessary for the energy transitions needed in both advanced and emerging economies to reduce greenhouse gas emissions.[25]

Corporate profit shifting to tax havens is estimated to cost governments $245 billion in lost taxes each year.[26] Recent progress at the G-7 to agree on a corporate minimum tax may go a long way to reversing these losses.[27] A fraction of these lost revenues could be used to close the financing gap to meet the global target of $100 billion to help developing countries deal with the impacts of climate change and transition their economies away from fossil fuels. Investors have an interest in governments having the resources needed to address the climate crisis and create stability and predictability in investment environments. Without these resources, multinational companies, and their investors, will face increasingly chaotic and unpredictable operating environments.

Conclusion

The FACT Coalition very much welcomes the SEC's initiatives to increase disclosures of financial risks and broader ESG disclosures. We agree with many investors that tax transparency is an

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[25] Gary, Ian, and Waskow, David. "Fair tax systems are vital for strong climate action", The Hill, April 28, 2021. https://thehill.com/opinion/energy-environment/550787-fair-tax-systems-are-vital-for-strong-climate-action?rl=1
[26] Tax Justice Network, The State of Tax Justice 2020. https://taxjustice net/reports/the-state-of-tax-justice-2020/
[27] The Tax Justice Network estimates that if the global minimum corporate tax rate were set at 21 percent governments would gain an additional $500 billion in tax revenue. https://taxjustice net/press/biden-tax-plan-can-recover-640bn-but-oecd-proposal-would-shrink-gains-and-reward-worst-perpetrators/

essential component of disclosures to allow investors to understand the financial, economic, regulatory, and reputational risks of the securities they hold.

We would be happy to answer any questions you may have related to the issues raised above.

Sincerely,

Ian Gary, Executive Director
The FACT Coalition

CC: The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Harren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner