



Submission by SEIU and EPSU to the Securities and Exchange Commission Concept Release on Corporate Disclosures of Offshore Subsidiaries (File Number S7-06-16)

SEIU, the Service Employees International Union representing 2 million members in the US, Canada and Puerto Rico and EPSU, the European Public Service Union representing 8 million members in Europe, welcome the opportunity to make public comments to the SEC concept release on corporate disclosures of offshore subsidiaries.

SEIU and EPSU are part of a global tax justice movement led on the trade union side by Public Services International, PSI, to ensure that companies pay their fair share of tax. In this context we have forged alliances with a number of NGOs that are making separate submissions to this consultation and upon which our contribution is largely based.

To help illustrate the scale of the tax problem in today's world, both our organisations have come together to expose in a report *Unhappy Meal*¹ McDonald's tax avoidance strategy. The report sheds light on how the US fast food leader uses a complex chain of subsidiaries, including tiny ones in the EU, Switzerland, the US and other places to shift or store profits in lower tax jurisdictions at the expense of society. This report led McDonald's being asked to testify twice before the European Parliament's Special Committee of enquiry on tax rulings². It also led the European Commission to investigate further the company in light of EU State Aid Rules, alongside ongoing tax investigations in a number of countries.

The SEC notice closely relates to one of our central demands for global public country-by-country reporting (hereafter public CBCR) on business, financial and accounting information by multinational companies. Public CBCR is a key transparency tool to assess corporate tax liabilities and thus fight corporate tax avoidance that costs billions of US dollars that could be used to finance much needed public services and redistribute more fairly wealth and income. As trade unions, public CBCR is also critical to implementing workers' fundamental rights to information and consultation on a company's overall economic situation. It is clearly central to investors to be in a position to know exactly the corporate structure and operations they invest in.

Thanks to the mobilisation of civil society, some inroads have been made in Europe in the banking and extracting sectors whilst legislative proposals are currently on the table to extend public CBCR to all sectors of the economy.

We hope that our joint submission will convince the SEC that deepening and extending disclosure requirements for companies that sell securities to the public will be critical to fully understand how companies are structured and operate and assess whether or not they are engaged in tax risks operations which in some cases can also have criminal implications.

Request for comment 52: Given that many registrants provide disclosure of material government regulations without a specific line-item requirement, are the current disclosure requirements sufficient? Would a specific requirement seeking this disclosure provide additional information that is important to investors? If so, what specific information and level

¹SEIU/EPSU/EFFAT/War on Want *Unhappy meal*, €1 billion in tax avoidance on the menu at McDonald's, 2015 <http://www.notaxfraud.eu/unhappy-meal>

²<http://www.europarl.europa.eu/news/en/news-room/20160314IPR19295/Google-Apple-IKEA-and-McDonalds-probed-by-Tax-Rulings-II-Committee>



of detail should we require and why? What would be the costs of requiring disclosure of this information?

In our view, the current disclosure requirements are insufficient for investors to make informed choices and voting decisions and assess tax risks which play such a prominent role in a company's economic health and overall reputation. Comparing US profits, taxes and operations to global figures does not provide adequate information and can hide significant vulnerabilities including tax liability. The risk associated with unclear tax responsibilities can be assessed only on a country-by-country basis simply because taxes are, to a large extent, assessed by national jurisdictions. In view of critical efforts by some governments and EU institutions to shed light on corporate tax payment and crack down on tax abuse including by changing tax regulations, the SEC review of the current disclosure requirements is very timely.

The following information should be included in the reporting requirement broken down per country:

- The name(s), nature of activities and geographical location of all subsidiaries. This information is crucial to understanding the basic structure and geographical spread of a company, as well as identifying the different subsidiaries belonging to the company, however small the subsidiaries are.
- The turnover and number of employees. These are key indicators of where the actual economic activities are taking place. This is crucial information for the assessment of whether the profits are being taxed in the jurisdiction where the activity takes place, or are being shifted to low-tax jurisdictions.
- Amount of accumulated earnings, stated capital, sales and purchases, tangible assets, value of assets and annual costs of maintaining those assets. This information will allow the investor to assess where real economic activity is taking place.
- Profit or loss before taxes. This information will show which jurisdictions the company is reporting its profits or losses in. A pattern often seen in cases of tax avoidance (and in some cases evasion) is that companies report high profits in low-tax jurisdictions where they have low levels of real economic activity, and report losses in the jurisdictions where the economic activity is actually taking place. Therefore, profit/loss data is crucial for identification of tax avoidance and evasion.
- Income tax accrued and income tax paid. This information is key for the assessment of whether the company is paying taxes where the economic activity takes place and value is created.
- Public subsidies received. This information will reveal whether the company is relying on public financial support, which also needs to be factored in.

This information will allow investors to identify risk factors and financial irregularities, and therefore provide them with a stronger basis for making investment decisions.

Among the investment risk factors aggressive tax planning structures and practices that can result in "tax scandals" are key ones. Tax revelations by the media or tax justice campaign groups can substantially impact the reputation of a company as well as the level of tax payments as a result of the tax administration responses to those scandals.

Public scrutiny of aggressive tax planning structures also increase the likelihood of changes in tax regulations as recent developments indicate. Increased corporate transparency via public CBCR will lower unnecessary risks for investors and incentivize sound tax practices



by companies, which would have substantial positive effects on the level of investments and for society at large.

The demand for effective tools to assess risks of aggressive tax planning is shared by a number of European investors themselves according to the European Commission as noted in the impact assessment of its proposed directive for (EU only) public CBCR: “[T]here is growing investors’ demand for fair tax planning. These increasingly see taxes as “a vital investment in the local infrastructure, employee-base and communities. They want to assess the risks associated with aggressive tax planning.”³

For ethical investors and public actors, including development finance institutions or pension funds run by trade unions, disclosure of CBCR information will also provide information that is vital for ensuring that investments are socially responsible and in line with the criteria and ethics of the investor.

It is now commonly admitted that the cost of obtaining and reporting CBCR information would be limited due to the fact that this information is top level data which any well-run companies would be expected to have at their disposal. Further, in line with the OECD’s BEPS action 13 on CBCR, multinational corporations with a turnover of at least €750 million operating will shortly be required to pass on some of the above listed data to their home tax administrations. Whilst we are strongly disappointed that OECD members have decided to keep this information out of reach for investors and the wider public, the point here is that public disclosure of these information requirements for these companies would therefore incur no or very limited additional expenses.

At EU level, there is no indication of negative cost impact of public disclosure. On the contrary, the European Commission’s impact assessment in 2014 of public CBCR for banks and financial institutions found that disclosure to the public “could have a small positive economic impact”.⁴ More recently, in another impact assessment of its legislative proposal last April to introduce public CBCR to very large companies operating in the EU the European Commission also found that public disclosure could in fact reduce costs of capital for private companies.⁵

Last, there are ongoing debates on public CBCR in several national parliaments in Europe as in France and the Netherlands, the cost for transnational companies does not appear to be an issue in light of the longer term gains for society and well informed investment choices. The critical question is the extent to which public CBCR will be limited to only some regions of the world or be introduced everywhere to ensure a global playing field.

53: *Foreign regulations, including foreign tax rates and treaties, may have a material impact on a registrant’s operations. Should we specifically require registrants to describe foreign regulations that affect their business? If so, what specific information and level of detail should we require? How would any additional information inform investment and voting decisions? Would there be challenges for registrants to provide such disclosure?*

³ Commission Staff Working Document, impact assessment assessing the potential for further transparency on income tax information, Accompanying the document Proposal for a Directive of the European Parliament and of the Council, amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, (COM(2016) 198 final) (SWD(2016) 118 final), 2016: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0117&from=EN>

⁴ “Study prepared by PwC for European Commission DG Markt, General assessment of potential economic consequences of country-by-country reporting under CRD IV”, September 2014

⁵ European Commission (2016). Impact assessment assessing the potential for further transparency on income tax information, p. 32: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0117&from=EN>



Registrants should be required to report on the number and content of advance tax rulings they may have with different jurisdictions. The European Union has begun to condemn those secret sweetheart tax deals between individual countries and specific multinationals with the support of accounting/tax advisers firms to ensure near 0 tax payment . More concretely, the recent state aid cases launched by the European Commission, including regarding McDonald's⁶, indicate that advance tax rulings can constitute a risk of illegal state aid cases which in turn can impact a company's tax payment in a given jurisdiction. This is why the European Parliament seeks the inclusion of information on tax rulings as part of an amendment on public CBCR in the context of an EU draft directive on shareholders' rights.

It would also be useful to include information on governments' bilateral double tax treaties that do not seem always very effective in preventing double non taxation of some companies.

135. Would additional guidance or instructions about how to treat certain types of obligations, such as interest payments, repurchase agreements or tax liabilities, be helpful to registrants in preparing this disclosure? Would such guidance limit the intended flexibility of the rule?

See answer to request for comment number 52. Companies should report on taxes paid and accrued.

257. Should we revise Item 601(b)(21) to eliminate the exclusions and require registrants to disclose all subsidiaries? What would be the benefits and challenges associated with this alternative? 258. Should we expand the exhibit requirement to include additional disclosure about the registrant's subsidiaries? What additional information would be important to investors and why? 259. Should we require registrants to include an organization or corporate structure chart or similar graphic depicting their subsidiaries and their basis of control? How could such a graphic facilitate investors' understanding of a registrant's corporate structure? Should we require this chart or graphic as an exhibit or in the text of the annual report? What would be the challenges associated with this approach?

See answer to request for comment number 52. Companies should report the name(s), nature of activities and geographical location of all subsidiaries.

[260] For the purposes of identifying which subsidiaries a registrant may omit from the exhibit, Item 601(b)(21) relies on the definition of "significant subsidiary" in Rule 1-02(w) of Regulation S-X. Does this definition appropriately exclude subsidiaries that are not important to investors? Does it exclude any subsidiaries that should be included? Should we consider a different definition or test for excluding certain subsidiaries from the exhibit? If so, what factors should we consider?

To have a complete picture of the business strategy and very complex structure of a company, the most effective way to go about it is to disclose information regarding all corporate subsidiaries that can all be deemed significant. There is much evidence today that shows that subsidiaries with few or no staff and low levels of economic activities play an essential role to channel or store huge amounts of profits or royalties from high to low or 0-tax jurisdictions. The complexity and opacity of multinational companies' structures⁷ is a key

⁶ http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_2016_258_R_0003&from=EN

⁷ See for instance UNCTAD's World Investment Report 2016 that shows that the top 100 MNEs have on average more than 500 subsidiaries for both business and non business reasons across more than 50



obstacle to informed choices on investments. Public transparency is therefore central to establishing a level playing field amongst investors and will contribute to a much healthier economic environment for the benefit of all.

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