

January 2, 2017

Mr. Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: File Number S7-08-17: Modernization and Simplification of Regulation S-K**

Dear Mr. Fields,

The Securities and Exchange Commission (SEC) plays a critical role in our economy as the agency charged with ensuring that our markets operate in a fair, orderly and efficient fashion. As part of this role, the SEC sets the rules for transparency and disclosure that make our markets work.

I am writing on behalf of the Institute on Taxation and Economic Policy (ITEP), a non-profit, non-partisan research organization that works on international, federal, state and local tax issues. Our goal is to provide lawmakers, the media and the public accurate and timely information about our country's tax system. To accomplish this goal, we rely heavily on the information publicly disclosed in financial statements.

To this end, we applaud the SEC's decision to amend Item(b)(21)(i) to require registrants to include in Exhibit 21 the legal entity identifier (LEI) for those registrants and subsidiaries where one has been obtained. This is a much-needed step forward that will provide transparency and investors an efficient way to look up critical information about how companies operate.

As per question 60, we urge the SEC to go further and require that companies obtain an LEI for each registrant and subsidiary listed in exhibit 21. Requiring all companies to obtain LEIs would greatly enhance the ability of investors to obtain the information more universally and set an even playing field in terms of disclosure for all companies. The fees and effort required in obtaining LEIs is trivial.

As per question 61, we urge the SEC to, at a minimum, require LEI's for all subsidiaries and registrants that are already required to be disclosed. Given the "significant subsidiary" requirement under Rule 1-02(w), any subsidiary currently listed by a company is more than large enough for the LEI information to be significant to investors.

**Additional Disclosure Needed**

While we applaud the step forward on requiring LEI, substantial additional disclosure is necessary for the efficient operation of the U.S. economy.

### *Country-by-Country Reporting*

The public and investors would benefit immensely if companies were required to publicly disclose tax and related information in their filings to the SEC. Specifically, companies should be annually required to disclose on a country-by-country basis their: profit or loss before taxes; income tax accrued for the current year; revenues from unrelated parties, related parties, and in total; income tax paid (on a cash basis); effective tax rate; stated capital; accumulated earnings; number of employees; and tangible assets other than cash or cash equivalents. Given that taxes are applied at the country level, country-by-country disclosures are the best way to enable investors and the public to fully evaluate the tax position of a given company.

Requiring the country-by-country disclosure specified above would require little if any additional cost to companies because all of this information is already collected for internal accounting purposes. In addition, larger U.S. corporations will soon be filing a similar set of information with the Internal Revenue Service (IRS) under country-by-country disclosure rules issued by the agency in 2016.<sup>i</sup>

### *Improving Subsidiary Disclosure*

The disclosure of subsidiary information in SEC filings is important for many reasons. For one, it provides transparency in allowing the public and investors to know if they are doing business with a company that is ultimately owned in whole or in part by another company. Second, providing subsidiary information allows investors and the public to get a clearer view into the offshore operations of a company. Third, this information is critical to businesses who need to know what company or entity they are ultimately doing business with.

While the current SEC standard requires a company to disclose their “significant” subsidiaries, this standard has proven woefully inadequate according to a number of studies. In the report “Offshore Shell Games 2017”, we summarized numerous examples of major companies which disclosed sudden drops in their number of subsidiaries from one year to the next.<sup>ii</sup> For example, the report notes that Google reported 25 tax haven subsidiaries in 2009, but since 2010 only discloses two, despite the fact that an academic study found that the 23 excluded after 2010 were still in operation. From the perspective of the public and investors, the shift in the number of disclosed subsidiaries may have misleadingly indicated some shift away from the use of tax havens, but the follow-up study proved this to be just a shift in disclosure.

Given the example of Google, there are a number of companies where investors might rightfully be unsure as to whether those subsidiaries being disclosed year to year by a company are accurately demonstrating any kind of shift in offshore operations. For example, Citigroup reported 427 tax haven subsidiaries in 2008, but only 41 in 2014. Similarly, Bank of America reported operating 264 tax haven subsidiaries in 2013, but disclosed only 22 in 2014. Without an extensive and potentially expensive amount of research, there is no way for the public and investors to know whether either of these changes in disclosure represent a genuine change in operation or simply a decision to not disclose a substantial number of subsidiaries from one year to the next.

Additionally, companies may simply not be disclosing many of their major subsidiaries at all. A study by Americans for Tax Fairness found that Walmart has 78 subsidiaries and branches in 15 tax havens, yet none of them were disclosed in their SEC filings. This omission is especially striking given that the company owns at least \$76 billion in assets through their undisclosed shell companies in Luxembourg and the Netherlands.<sup>iii</sup>

Finally, a recent study performed by ITEP found that the number of subsidiaries that companies are required to disclose represent a relatively small subset of a company's overall subsidiaries. In the study, we compared the number of subsidiaries that a selection of financial institutions disclosed to the Federal Reserve compared to the number of subsidiaries they disclosed to the SEC. Ultimately, the study found that SEC allowed companies to omit 91 percent of their subsidiaries compared to those disclosed to the Federal Reserve.<sup>iv</sup> In other words, this study indicates that the current SEC standard only requires companies to report a fraction of their subsidiaries and thus provides investors and the public with a relatively incomplete picture of their operations.

The straightforward solution to the incomplete picture that current SEC requirements provide is to require that companies disclose all their subsidiaries. This more complete disclosure would provide complete transparency and prevent any kind of gaming of what is disclosed. Given that a company must internally maintain basic ownership and organizational information, providing a list of complete subsidiaries would likely have a negligible cost to companies.

Besides disclosing all of their subsidiaries, companies should also be required to disclose each subsidiary's name, place of incorporation, where it is tax resident, LEI (as per the discussion above) and its relation to the parent entity. This information will allow investors and the public to have a clearer understanding of how the company operates and the specific function of individual subsidiaries within it. This information will allow investors and the public to have a clearer understanding of how the company operates and the specific function of individual subsidiaries within it.

## **Conclusion**

Corporate transparency is critical to an efficient and fair marketplace. In order to keep up with the rapid pace of change in our economy, the SEC is right to constantly reevaluate and improve upon its disclosure requirements. The rapid growth of foreign operations now necessitates that the SEC adjust by requiring companies to provide additional information on such operations. The offshore operations of these companies have simply become too crucial to our economy at large to remain in the shadows.

Thank you for your careful consideration of these comments.

Sincerely,

**Alan Essig**

*Executive Director*

Institute on Taxation and Economic Policy

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<sup>i</sup> Kelsey Kober, "To Maximize Corporate Transparency, the IRS Must Strengthen its Rules on Country-by-Country Reporting," *Tax Justice Blog*, June 14, 2016. [http://www.taxjusticeblog.org/archive/2016/06/to\\_maximize\\_corporate\\_transpar.php](http://www.taxjusticeblog.org/archive/2016/06/to_maximize_corporate_transpar.php)

<sup>ii</sup> Institute on Taxation and Economic Policy and US PIRG, "Offshore Shell Games 2017," October 17, 2017. <https://itep.org/offshoreshellgames2017/>

<sup>iii</sup> Americans for Tax Fairness, "The Walmart Web," June 17, 2015. <http://www.americansfortaxfairness.org/files/TheWalmartWeb-June-2015-FINAL.pdf>

<sup>iv</sup> Institute on Taxation and Economic Policy and US PIRG, "Offshore Shell Games 2017," October 17, 2017. <https://itep.org/offshoreshellgames2017/>