



**Statement of Frank Clemente, Executive Director, Americans for Tax Fairness  
Public Hearing on Internal Revenue Service REG-109822-15  
Country-by-Country Reporting  
May 13, 2016**

I appreciate the opportunity to testify today on the proposed rule to implement Country-by-Country (CbC) Reporting by multinational companies. [Americans for Tax Fairness](#) (ATF) is a coalition of over 425 national and state organizations that represents tens of millions of individual members. We fully support your efforts to implement our international obligations in this area and to begin addressing the problem of profit shifting by multinational companies.

Too many large, profitable multinational corporations use tax loopholes to avoid paying their fair share of taxes, leaving the rest of us to pick up the tab or to suffer from inadequate public services. Profit shifting by multinationals is a principal method of corporate tax avoidance. Improved reporting requirements, as proposed in this regulation, are critical to identifying this form of corporate tax dodging. And improved reporting will lead to better long-term solutions that ensure corporations pay the taxes they owe.

My testimony covers four areas today:

- 1) The critical need for CbC Reports to be publicly available
- 2) Opposition to creating a national security exception
- 3) Treating CbC Reports as Treasury reports, not as tax returns
- 4) If CbC Reports get classified as tax return information, it is imperative to create a mechanism for aggregating CbC data and making it publicly available

**Public Availability of CbC Reports**

It is estimated that 303 U.S. multinationals have a total of \$2.4 trillion in profits offshore, based on company filings with the Securities and Exchange Commission examined by Citizens for Tax Justice.<sup>1</sup> Just one-sixth (55) of these 303 companies disclose the tax rate they are paying on these offshore profits and how much they would owe if they repatriate the funds. Based on that information, Citizens for Tax Justice estimates these corporations owe up to \$700 billion in U.S. taxes. That is an enormous sum of money that could do an enormous amount of good here at home.

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<sup>1</sup> Citizens for Tax Justice, "Fortune 500 Companies Hold a Record \$2.4 Trillion Offshore" (March 3, 2016).  
<http://ctj.org/pdf/pre0316.pdf>

Needless to say, it is critical that the final rule require that CbC Reports be made public. The American public needs to know where its multinationals have foreign subsidiaries, whether they are in tax havens, how large are the investments of these foreign subsidiaries, the size of the profits – or losses – being generated by these subsidiaries, and how much in taxes they are paying and at what tax rate.

Let me illustrate the importance of corporate transparency based on two recent case studies of enormous tax dodging exposed by ATF after many hours of painstaking research.

[Our report on Walmart's web of offshore subsidiaries](#) revealed the company has placed at least \$76 billion worth of assets in 78 subsidiaries located in 15 tax havens in which it has no retail stores.<sup>2</sup> This was the first-ever public documentation of Walmart's tax-haven subsidiaries. Walmart has never openly reported their existence in its SEC filings where subsidiaries are normally disclosed. The company has kept these tax-haven subsidiaries secretive by burying mention of their existence deep inside of SEC filings and financial documents filed by Walmart subsidiaries all around the world, only some of which are available to the public.

Compiling this data required hundreds of hours of labor, which unearthed financial records from Washington to Switzerland, London to Luxembourg, and South Africa to Central America. Even then, because of the opacity of information under current rules, we were unable to fully assess the extent of Walmart's network of tax-haven subsidiaries and how Walmart may use it to avoid paying U.S. taxes now and in the future.

We issued two reports ([here](#) and [here](#)) in the last six months showing that Pfizer actually holds twice the amount of profits offshore as it claimed in its SEC filings – about \$150 billion in 2014, rather than just \$74 billion in Permanently Reinvested Earnings it reported. We also estimated that Pfizer owed \$35 billion in U.S. taxes on those profits.<sup>3</sup> The company more or less confirmed the accuracy of these estimates when questioned by the media. Again, this report required a considerable amount of research piecing together a puzzle. And while we know the topline numbers, we have no idea where these profits are located, whether the company has employees and real business in those locations, what tax rate has been paid, etc.

Currently, the proposed CbC rule explicitly excludes deferred taxes and provisions for uncertain tax positions from calculation of the accrued tax expense to be recorded by multinational parent entities on Form XXXX. While that approach makes sense, information regarding a multinational's deferred taxes and uncertain tax positions offers extremely useful data in evaluating its tax practices.

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<sup>2</sup> Americans for Tax Fairness, "The Walmart Web: How the world's biggest corporation secretly uses tax havens to dodge taxes (June 2015). <http://www.americansfortaxfairness.org/files/TheWalmartWeb-June-2015-FINAL.pdf>

<sup>3</sup> Americans for Tax Fairness, "Pfizer's Tax Dodging Rx: Stash Profits Offshore" (November 2015). <http://www.americansfortaxfairness.org/files/Pfizers-Tax-Dodging-Rx-Stash-Profits-Offshore-Final1.pdf>  
ATF, "Pfizer: Price Gouger, Tax Dodger" (February 2016). <http://americansfortaxfairness.org/files/FINAL-2.pdf>

Multinationals often shift profits to other countries and then defer the payment of taxes on those profits, making deferred tax information a possible indicator of profit shifting and, over time, a marker of any changes in profit-shifting patterns. In addition, the U.S. tax code now requires multinationals to take a provision for an uncertain tax position when it is more likely than not that the tax position would not survive an IRS challenge. Provisions for uncertain tax positions are, thus, clear indicators of the extent to which a multinational is operating in gray areas and may be engaging in aggressive or abusive tax practices, including with respect to transfer pricing. Due to the unique and highly useful nature of corporate information related to deferred taxes and uncertain tax provisions, and because those figures are already calculated on an annual basis and can be added at virtually no cost to the CbC Report, we recommend that both data elements be added to Form XXXX.

### **Opposition to Creating a National Security Exception**

We are opposed to a national security exception for CbC Reports. It is unnecessary and would require expensive, time-consuming procedures that would likely contribute little to national security. None of the CbC Report information being collected is a national security risk. It is simply financial information about multinational corporate revenues, profits, income tax paid or accrued, capital, earnings, number of employees, and value of tangible assets.

Nevertheless, if you create a national security exception, a careful process should be established to prevent abuses. Exceptions should be granted only with the joint concurrence of the Secretaries of the Treasury, State, and Defense Departments, after review of a specific application requesting the exception by the parent entity otherwise obligated to file a CbC Report.

In reviewing an application, the Secretaries should consider such factors as the likelihood of harm to national security if the information were to become public, the importance of complying with our international obligations, and any evidence that the entity may be engaging in profit shifting or other tax avoidance practices.

Given that these exceptions are discretionary and the criteria used to grant them are unlikely to become public, the Secretaries should provide the congressional tax writing and intelligence committees with an annual letter indicating the number of national security exceptions granted and the general reasons for granting those exceptions.

### **Treat CbC Reports as Treasury Reports, Not as Tax Returns**

While we firmly believe that CbC reporting information should be publicly available, should you choose not to adopt that position we ask that you not treat it as tax return information. A better approach would be to treat CbC reports in the same manner as Financial Bank Account Reports (FBARs). FBARs are filed by U.S. persons with the Treasury Department, rather than with the IRS, so they are not treated as tax return information.

This approach allows not only the IRS, but also Treasury officials and other federal law enforcement personnel to review the report information outside the confines of Section 6103. Handling CbC Reports as non-tax Treasury filings would make it possible for the country-by-country data to be accessed by senior policymakers other than IRS agents, such as Treasury officials, and Members of Congress as they work to develop tax policy and, in some cases, vote on tax legislation at the federal and state levels.

### **Inform the Public with Aggregate Data if CbC Reports Get Classified as Tax Returns**

If the final rule continues to categorize CbC Reports as “return information,” we recommend that it also require issuance of an annual public summary of the country-by-country information in aggregate form. The U.S. does not have reliable country-by-country information about large U.S. multinationals in terms of where they operate, how many employees they have, the size of their capital investments, the amount of their profits or losses, or the taxes they pay. The information to be collected in the CbC Reports will, for the first time, provide accurate, timely economic, business, and tax information that could play an invaluable role in designing effective and efficient U.S. policy.

An annual public summary at the very least should provide general aggregate information such as the total number of multinationals that filed the form and, for each country with at least three U.S. multinationals, the total number of U.S. multinationals operating there, the total number of employees, and the total amount of revenues, profits or losses, capital investments, and taxes paid or accrued by U.S. multinationals in that jurisdiction.

We recommend that the public summary include a list by name of the multinationals that filed CbC Reports. This would enable policymakers, academics, and the public to learn what U.S. multinationals meet the reporting threshold. This may also enable third parties to identify any multinationals that should have filed CbC Reports, but did not.

Also, the public summary could provide basic aggregated information for each multinational group, which could include the total number of constituent entities included in each multinational group, the total number and names of the countries where it has an economic presence, and the total number of employees reported for each jurisdiction. None of those facts involves tax information, and there is no reason to keep any of those facts from policymakers, academics, or the public. In addition, for each multinational, the public summary could provide a range of profits or losses, capital investments, and taxes paid or accrued in each country. Again, this information would not only benefit policymakers, academics, and the public, but also enable third parties, including other countries, to double check the accuracy of the figures provided.

Thanks again for giving me the opportunity to testify today.