September 29, 2016

Technical Director
File Reference No. 2016-270
FASB
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 2016-270: Comments on the Exposure Draft for the Proposed Accounting Standards Update to Income Taxes

Dear Members of the Board:

Americans for Tax Fairness (ATF) is a coalition of 425 national and state organizations that represent tens of millions of individual members. On their behalf, I am writing to thank you for pursuing improvements to reporting standards for business income tax disclosures with respect to foreign taxes and earnings.

At the same time, we urge FASB to expand the disclosure requirements to include annual country-by-country reporting for a U.S. corporation's subsidiaries that includes revenues, profits or loss before taxes, income tax accrued for the current year, 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. In addition, corporations should be required to report on the aggregate amount they would owe in U.S. taxes should they repatriate their offshore earnings, and provide a country-by-country estimate as well.

We further recommend that FASB require that this information be made available to investors and the public in a corporation's annual financial report. We do not believe that these requirements would place a burden on corporations because of the new Treasury Department rule requiring that similar information be filed with the IRS beginning next year for companies with at least $850 million in annual revenue.[1]

This information is particularly material to investors given the scale and scope of U.S. corporate profits being booked offshore, especially in tax havens, and the potential tax liabilities.

[1] Country-by-Country Reporting, final rule issued by the U.S. Department of the Treasury, 81 Fed. Reg. 126 (6/30/2016), at 42482. https://www.federalregister.gov/documents/2016/06/30/2016-15482/country-by-country-reporting

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In recent years, international taxation and tax strategies have become increasingly relevant to corporate profitability. At the same time, the international tax world is changing dramatically—posing key opportunities and risks for companies and investors. Investors are currently unable to assess the impact of these changes due to outdated disclosure requirements.

Any reasonable investor would want to know this information especially when tax liability plays such a prominent role in a company's overall financial health. Further, there are significant reputational risks to companies engaged in offshore tax avoidance or evasion, which may indirectly impact the finances of U.S. issuers.[2]

There have been two recent estimates provided of the amount of profits U.S. corporations have parked offshore and the amount of taxes potentially owed on those profits. Citizens for Tax Justice (CTJ) estimated that 303 Fortune 500 companies had a total of $2.4 trillion in profits offshore at the end of 2015, based on SEC filings.[3] 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 repatriated the funds. Based on that information, CTJ estimates these corporations owe up to $695 billion in U.S. taxes—an enormous sum that could affect the financial health of scores of multinational corporations and their many investors.

Another estimate was made by Credit Suisse based on 2014 filings by S&P 500 corporations. It found those firms had $2.1 trillion in offshore profits with "$533 billion off balance-sheet tax liability" on those earnings. This estimate was based on data from 69 companies out of 310 S&P 500 companies, or one-fifth, that disclosed how much U.S. tax they could owe. Credit Suisse determined that the median additional tax liability for the disclosing companies was around 25%. It also estimated that potential tax liability represented more than 5% of market cap for 68 of the companies and more than 10% for 14 of the companies.[4]

Let me illustrate the importance of the full disclosure of financial information by corporate subsidiaries that we are proposing based on three recent case studies by Americans for Tax Fairness (ATF).

ATF issued a major investigative report in 2015 on the web of offshore subsidiaries of Walmart, a U.S.-based multinational. That report revealed that the company had placed at least $76 billion worth of assets in 78 subsidiaries located in 15 tax havens in which it had no retail stores.[5] Those assets represented 37% of the company's total assets in 2014. Based on our

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[2] BBC News, "Google, Amazon, Starbucks: The rise of 'tax shaming'" (May 21, 2013). http://www.bbc.com/news/magazine-20560359

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

[4] Credit Suisse, "Parking-A-Lot Overseas," (March 17, 2015). https://doc.research-and-analytics.csfb.com/docView?language=ENG&format=PDF&source_id=em&document_id=1045617491&serialid=jHde13PmaivwZHRANjglDCV3rbEKRE9uz%2bZu3ZXtQu0%3d

[5] 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

search of public sources, we believe this was the first-ever public documentation of Walmart's tax-haven subsidiaries and their financial information. Walmart has never openly reported the existence of these subsidiaries in its SEC filings where subsidiaries are normally disclosed. The company has kept these tax-haven subsidiaries secret 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 those documents 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.

A second case study arose from an October 2015 announcement by Pfizer, a U.S.-resident company, that it intended to merge with Allergan, a prescription drug company headquartered in Ireland, a tax haven. (Allergan was formerly a U.S.-resident company prior to an inversion with an Irish firm, and it still maintains its headquarters here) News reports at the time indicated the primary purpose of the merger was tax savings. The merger ultimately failed because of draft U.S. Treasury Department rules announced in April 2015, which effectively killed the enormous tax benefits Pfizer was counting on.

ATF opposed the Pfizer-Allergan merger and issued two reports (here and here) showing how little taxes Pfizer was already paying on its offshore profits due its extensive use of tax havens, and how much it stood to gain in tax avoidance from the merger.[6] We estimated that Pfizer held 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 had reported. We also estimated that Pfizer owed $35 billion in U.S. taxes on those profits.

The company more or less confirmed the accuracy of these estimates when questioned by the media. Both ATF reports 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, or any other important details.

Perhaps more significant for purposes of the proposed FASB reporting standards, ATF was inundated by phone calls from investment firms who wanted to know more details about our findings and what the implications would be for their investments in Pfizer.

And third, ATF recently issued a report about Gilead Sciences, a U.S.-based multinational and the sixth most valuable pharmaceutical company in the world, with a market value of $146

[6] 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

billion last year.[7] Gilead's enormous profits come primarily from two life-saving Hepatitis C (HCV) medications. ATF found that Gilead's sales and profits have soared since the drugs launched, while its tax rate has plummeted. Gilead's worldwide revenues recently *tripled*—from $11.2 billion in 2013 to $32.6 billion in 2015. Corporate pre-tax profits soared even more: rising from $4.2 billion to $21.7 billion from 2013 to 2015, a *five-fold* increase. But, over the same period Gilead's worldwide effective tax rate plummeted by 40%—dropping from 27.3% in 2013 to 16.4% in 2015.

The ability of U.S. corporations to defer paying U.S. taxes on their offshore earnings until they are repatriated has facilitated Gilead's three-fold increase in untaxed offshore profits during the same period, which rose from $8.6 billion in 2013 to $28.5 billion in 2015. The profits are most likely in Ireland, a tax haven, because the key HCV drug from which Gilead derives so many profits has been "domiciled" there since 2012 even though the patent is registered in the United States. Gilead reports to the SEC that it would owe $9.7 billion in taxes if it brought the $28.5 billion in profits home, which means it is paying a foreign tax rate of only 1%.

The importance of the Gilead case example for purposes of FASB's disclosure initiative is that it is possible Gilead and the Irish government are engaged in a case of state aid, which could have significant ramifications for the company's investors. The European Commission's (EC) $14.5 billion state aid enforcement action against Ireland for its special tax arrangements with Apple provides a harbinger of what Ireland could face with respect to Gilead, if the company is benefitting from a similar sweetheart tax deal. If so, Gilead's investors could possibly face a large tax assessment should an EC case be brought against it.

In conclusion, to protect investors' material interests ATF recommends that FASB require disclosure each year on a country-by-country basis of U.S. corporate subsidiaries' revenues, profits or losses before taxes, income tax accrued for the current year, 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. In addition, corporations should be required to report on the aggregate amount they would owe in U.S. taxes should they repatriate their offshore earnings, and provide a country-by-country estimate of those taxes owed. This information should be made public so that investors are not kept in the dark.

Thank you for considering our comments.

Sincerely,

Frank Clemente
Executive Director

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[7] Americans or Tax Fairness, "Gilead Sciences" Price Gouger, Tax Dodger" (July 2016). http://www.americansfortaxfairness.org/files/ATF-Gilead-Report-Finalv3-for-Web.pdf

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