July 18, 2023

An Open Letter to the Chairs, Ranking Members, and Members of

The Senate Committee on Finance; Senate Committee on Banking, Housing, and Urban Affairs; Senate Committee on Commerce, Space and Science; House Committee on Ways and Means; House Committee on Financial Services; and House Committee on Energy and Commerce

FASB's Public Country-by Country Reporting Scheme Deserves Scrutiny

Dear Chairs, Ranking Members, and Members of the Committees:

We, the undersigned free-market, fiscal policy, and taxpayer advocacy organizations, write to express our concerns about the Financial Accounting Standards Board's (FASB) most recent proposal that would require many U.S. companies to provide public country-by-country reporting (CBCR) of their tax liabilities. Specifically, we commend your attention to accounting standard 2023-ED100, which is FASB's third attempt to impose public CBCR.

FASB, a non-profit, non-governmental entity, has served for 50 years as the standard-setter for those that follow Generally Accepted Accounting Principles (GAAP). The Securities and Exchange Commission (SEC), an independent federal agency, regards FASB as "authoritative" and has effectively delegated the technical development of accounting standards to FASB. These standards, in turn, help to shape businesses' financial statements so that investors can better understand the condition of companies.

This relationship of trust between FASB and SEC, as well as the confidence they have earned from the entire financial sector, is now threatened by 2023-ED100. One reason is the increasing pressure that some lawmakers have put on FASB to develop an accounting standard that seems to serve "progressive" tax policy interests more than investor interests.

In 2019, for example, 13 U.S. Senators wrote to FASB Chair Golden urging aggressive public CBCR purportedly on behalf of investors, while making clear another motive: "Public country-by-country disclosure is necessary for policymakers to examine economic trends and address important public policy issues… policymakers need to know whether – and how – the new law is encouraging tax avoidance."[1] In a previous communication to FASB from 2017, House Members expressed admiration for how the Board's standard could be placed in service to policies supposedly intended to "combat tax avoidance."[2] The fact that public CBCR was paired with an entire "corporate governance" agenda of ESG and union-backed workforce mandates, in a bill that barely passed the House in 2021,[3] also fuels suspicions that larger forces are at work than assisting investors.

Yet, even without this perception of political pressure, 2023-ED100 would be controversial and flawed:

[1] Sen. Chris Van Hollen (D-MD). (September 30, 2019). "Van Hollen, Democratic Senators Urge Greater Transparency in Tax Disclosures." https://www.vanhollen.senate.gov/news/press-releases/van-hollen-democratic-senators-urge-greater-transparency-in-tax-disclosures.

[2] See copy of letter at: https://thefactcoalition.org/country-by-country-reporting-letter/.

[3] See HR 1187, "Corporate Governance Improvement and Investor Protection Act." https://www.congress.gov/bill/117th-congress/house-bill/1187.

- **Compliance Costs Are Not Minor.** FASB's proposed standard would require much more information and work on the part of affected companies than current country-by-country reporting made in confidential returns to the IRS. Producing data for the purposes of financial statements and internal controls can be far different than producing data for tax purposes. Countries' financial and accounting conventions have various measuring periods and requirements for the closing of accounting books versus the filing of tax returns, and may have variations on GAAP that will make harmonization difficult. Companies utilizing transfer pricing arrangements, anticipated settlements with other tax authorities, or even loss carryforwards will have even greater troubles in distinguishing these non-cash-flow activities from actual tax liabilities. Companies will need to spend more time and expense monitoring changes in business patterns, market conditions, or government policies that could cause the firms' activities in a particular country to fall on "side" of the new 5 percent of total income taxes paid threshold for disaggregating tax burdens by country.

- **Companies Will be Forced to Predict the Impossible.** 2023-ED100 entails a whole new level of estimated tax risks in companies' financial reports that depend on barely educated guesses about future actions that governments will take. In the U.S. alone, revenue impact estimates of "green energy" credits in the Inflation Reduction Act have jumped massively since the law passed in 2022, while the future of key portions of the 2017 Tax Cuts and Jobs Act has remained in flux. Investors cannot be provided any reasonable degree of "certainty" about tax policy decisions of governments here, much less abroad. As one commenter to 2023-ED100 put it, "It would be impossible even for us, as tax experts, to draw any meaningful conclusions from the information required to be disclosed by the proposed ASU about (1) the likelihood that a revenue authority in a particular jurisdiction will effectively challenge a company's tax positions in that jurisdiction, or (2) planning opportunities in a jurisdiction."[4]

- **Small Businesses Could be Caught in the Net.** While 2023-ED100 in its current form is aimed at public companies with shareholders, FASB has requested comments on whether private firms should be subject to the same standard. Even if FASB ultimately demurs on this matter, it is important to remember that each multinational public company may have thousands of small businesses in its supply chain. These businesses may need to furnish more information, with greater timeliness and detail, about how their operations might contribute to the revenue, employment, and overall tax picture of the larger multinational enterprise. Doing so will entail direct, and considerable compliance costs, including recordkeeping, research, and completion of forms.

- **Economic Security May be at Risk.** 2023-ED100 does not readily apply to non-U.S. companies which are not operating here. FASB cannot change this fact, but Congress should be aware of the implications. Foreign state-owned enterprises (SOEs) subsidized with billions of dollars from their countries' taxpayers will not be held to the same accounting standards. As a result, these SOEs, and the governments backing them, gain an economic and competitive advantage over U.S. public companies, which would be burdened by compliance over 2023-ED100.

All these points raise a final question – are the problems surrounding 2023-ED100 worth the additional "information" that investors would supposedly be able to analyze and strategically deploy in their decision making? Many who submitted comments on the standard were skeptical. The Florida Institute of CPAs wrote: "It is in our opinion that investors do not analyze 10-Ks and other annual reports for tax analysis. … Investors are more concerned with the operating results of companies."[5]Ivins, Phillips & Barker wrote that, [i]f we, as tax experts, are

[4]Ivins Phillips Barker. Letter to: Salo, Hillary H. (Technical Director, FASB). May 25, 2023. "Re: File Reference No. 2023-ED100: Improvements to Income Tax Disclosures." Retrieved from:

https://fasb.org/Page/ShowPdf?path=TAXDISC.ED.007.IVINS%20PHILLIPS%20BARKER%20CHARTERED%20SEE%20LISTED.pdf&title=TAXDISC.ED.007.IVINS%20PHILLIPS%20BARKER%20CHARTERED%20SEE%20LISTED.[5] Hancock, Genevieve. Letter to: Letter to: Salo, Hillary H. (Technical Director, FASB). May 10, 2023. Retrieved from: https://fasb.org/Page/ShowPdf?path=TAXDISC.ED.004.FICPA%20APAS%20COMMITTEE%20GENEVIEVE%20HANCOCK.pdf&title=TAXDISC.ED.004.FICPA%20APAS%20COMMITTEE%20GENEVIEVE%20HANCOCK.

unable to draw meaningful conclusions from the data presented, we seriously doubt that ordinary investors will draw any meaningful conclusions about risks and opportunities."[6]

Members of Congress have in the past expressed skepticism as well. In the dissenting views section of the House Financial Services Committee report on HR 3007 (117th Congress), lawmakers noted:

> By not taking into consideration the differences in tax codes and accounting standards across all jurisdictions, these disclosures have the potential to mislead investors and will ultimately be useless for analyzing companies for investment purposes.[7]

From these observations, it could be argued that the information generated from 2023-ED100 can actually divert investors' focus from "the fundamentals" that financial statements and other public company reports are supposed to provide, and obfuscate what can already be difficult choices on where investors ought to direct their valuable resources.

The public comment period for 2023-ED100 has passed, but this should not deter Members of Congress from making further inquiries and considering steps the legislative branch should take. These include:

- **Better Cost-Benefit Analysis.** A proposal as consequential as 2023-ED100 merits serious modeling and sophisticated estimation techniques of its compliance costs to public companies as well as the small businesses in their supply chains, disaggregated by sectors and levels of staff. Congress could ask FASB to consult with private sector firms as well as public agencies experienced in such techniques, including Office of Information and Regulatory Affairs, the Congressional Budget Office, the Government Accountability Office (GAO), and the Small Business Administration Office of Advocacy.
- **Hearings.** Again, given 2023-ED100's major impact, several Committees of jurisdiction could hold hearings with FASB's leadership as well as private-sector witnesses on topics ranging from the proposed standard's retrospective nature to opportunities for streamlining the reporting requirements.
- **Placing 2023-ED100 into Context.** What other burdens are falling upon U.S. businesses because of OECD's Pillars 1 and 2 framework, which will require new country-by-country tax payments (not just reporting)? How does FASB's proposed standard compare with OECD's CBCR proposal, or the draconian scheme from the Australian government that could soon take effect? The answers to these questions have vital implications for U.S. fiscal and foreign policy. Congress could ask the Congressional Research Service or GAO to explore these matters and determine how they fit together for a coordinated legislative response.

We do not make these recommendations lightly. FASB should be able to concentrate on its standard-setting function, which aids the accounting profession with resolving difficult technical problems. Unfortunately, external factors, combined with the sweeping nature of 2023-ED100, now necessarily involve both the legislative and executive branches of the federal government, and call for measured responses.[8] We hope this communication will assist with those responses and we are at your service if you have further questions. Thank you for your consideration.

[6]Ivins Phillips Barker. Letter to: Salo, Hillary H. (Technical Director, FASB). May 25, 2023. "Re: File Reference No. 2023-ED100: Improvements to Income Tax Disclosures." Retrieved from: https://fasb.org/Page/ShowPdf?path=TAXDISC.ED.007.IVINS%20PHILLIPS%20BARKER%20CHARTERED%20SEE%20LISTED.pdf&title=TAXDISC.ED.007.IVINS%20PHILLIPS%20BARKER%20CHARTERED%20SEE%20LISTED.[7] See House Financial Services Committee. Report on HR 3007, Disclosure of Tax Havens and Offshoring Act. H Rpt 117-52. https://www.congress.gov/congressional-report/117th-congress/house-report/52/1.

[8] For further background, please see National Taxpayers Union. “The Bid to Impose Costly ‘Reporting Standards’ on American Employers.” June 7, 2023. Retrieved from: https://www.ntu.org/publications/detail/the-bid-to-impose-tax-reporting-standards-on-american-employers. And Garst, Brian. “Accounting Board Should Resist Politicizing Tax Disclosure Rules.” InsideSources DC Journal, May 1, 2023. Retrieved from: https://dcjournal.com/accounting-board-should-resist-politicizing-tax-disclosure-rules/.

Sincerely,

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