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May 30, 2023

Mr. Richard R. Jones
Chair
Financial Accounting Standards Board
801 Main Avenue
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed Accounting Standards Update, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures* (File Reference No. 2023-ED100)

Dear Chair Jones:

The U.S. Chamber of Commerce ("Chamber") appreciates the opportunity to comment on the Financial Accounting Standards Board's ("FASB" or "Board") Exposure Draft of a proposed Accounting Standards Update, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures* ("Proposal" or "Exposure Draft").

The Proposal would impose significant additional income tax disclosure requirements in two areas: rate reconciliation and income taxes paid. It would require companies to disclose a variety of disaggregated quantitative and qualitative information in each of these areas, including information by individual jurisdictions (i.e., federal (national), state and local, and foreign). And it includes requirements for both annual and interim reporting that would, in some form, apply to all entities subject to income taxes.

While the Chamber supports FASB in its mission to develop standards of financial reporting that provide investors and other users with material, decision-useful information, we continue to have serious concerns about this project, as previously expressed to FASB.[1] Because these concerns now extend to the Proposal itself, we reiterate and expand on them below. And when considered in conjunction with the additional concerns raised herein, it becomes clear that the Proposal's infirmities are sufficiently extensive to warrant its immediate withdrawal and reconsideration.

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[1] Letter from Tom Quaadman, Exec. Vice President, and Watson M. McLeish, Senior Vice President, Chamber of Com. of the U.S., to Richard R. Jones, Chair, Fin. Acct. Standards Bd. (Feb. 7, 2023), https://www.uschamber.com/assets/documents/230207_CCMC-Comments_ImprovementstoIncomeTaxDisclosure_FASB_2023-02-08-163509_blww.pdf.

Threshold Concerns

As an overarching matter, the Proposal is not driven by a compelling need. Under existing Generally Accepted Accounting Principles ("GAAP")—supplemented for registrants by requirements of the U.S. Securities and Exchange Commission ("SEC")—companies already disclose significant amounts of income tax information in their financial statements and footnotes for investors. And more granular income tax information is confidentially reported to relevant domestic and foreign taxing authorities to ensure compliance with applicable tax laws. But financial disclosures to facilitate investment decision-making and confidential tax reporting to ensure compliance are two fundamentally different—and mutually exclusive—propositions.

Instead of being driven by a compelling need, the Proposal reflects the efforts of politically driven activists in seeking to compel firms to disclose information—using GAAP under the guise of providing decision-useful information for investors—to name, shame, or otherwise vilify companies, influence tax policy, increase taxes on businesses, and deter investment. FASB should reject this approach and draw guidance from the U.S. Court of Appeals for the D.C. Circuit, which has held that disclosures designed to shame a business constitute compelled speech that violates the First Amendment.[2]

Demands for increased income tax disclosures that derive from a politically driven narrative—namely, that corporations do not "pay their fair share"—are neither based on an investor mandate nor in the best interests of investors generally. Disseminating information that is more governmental in purpose—and that is already being reported to the government—is the province of Congress and federal regulators, not FASB. Any information disclosed in the GAAP financial statements and footnotes should reflect, not drive, income tax policy and regulation.

The Chamber recognizes that the Proposal does not technically incorporate the annual country-by-country reporting of income tax information, as required by Treasury regulation,[3] in the GAAP financial statements and footnotes. We remain concerned, however, that the Proposal's jurisdictional income tax disclosure requirements would accomplish in substance what FASB proclaims not to be adopting in form.

Perhaps most important of all, however, our sobering determination that the Proposal's income tax disclosure requirements do not comport with multiple tenets of FASB's own *Conceptual Framework for Financial Reporting* ("Conceptual Framework," "Framework," or "Concepts Statements"). The following discussion lays out the Proposal's most acute inconsistencies with the Conceptual Framework, the collective weight of which warrant its immediate withdrawal and reconsideration.

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[2] *See Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518 (D.C. Cir. 2015).

[3] *See* Treas. Reg. § 1.6038-4. Country-by-Country reports filed with the Internal Revenue Service and exchanged pursuant to a competent authority arrangement with another country's tax authority are subject to strict confidentiality requirements, data safeguards, and appropriate use restrictions.

Inconsistencies with the Conceptual Framework

FASB promulgates GAAP for general-purpose financial reporting for business entities, both public and private.[4] To assist and guide the Board in setting sound financial accounting standards, FASB developed a Conceptual Framework, portions of which were amended as recently as 2021. The Framework, which comprises a series of Concepts Statements, is intended to provide fundamental concepts that will be the basis for development of financial accounting and reporting standards.[5] As set forth below, however, the Proposal would contravene several fundamental concepts of the Conceptual Framework—inconsistencies that call into question the merits of FASB's proposed income tax disclosure requirements.

Objective

The objective of general-purpose financial reporting forms the foundation of the Conceptual Framework. As made clear in the Concepts Statements, the objective is to "provide financial information about the reporting entity that is useful to existing and potential investors, lenders, and other creditors in making decisions about providing resources to the entity."[6] The Concept Statements also recognize, however, that individual primary users may have different, and possibly conflicting, information needs and desires, and that the Board cannot accommodate every request for information. In developing financial reporting standards, therefore, the Board must seek to provide the information set that will meet the needs of the maximum number of primary users in cost-beneficial ways.[7]

As previously discussed, the Proposal appears to be driven by a subset of activists who have misappropriated the objective of GAAP (to provide decision-useful information for investors) to serve their own political purposes. This subset neither represents nor reflects broad-based demand by investors, lenders, or other creditors of either public or private companies for the proposed income tax disclosures.

Relatedly, the Chamber has called on FASB to disclose those with whom it has consulted on this project.[8] While certain processes are public, such as discussions during advisory group meetings or comment letters responding to formal solicitations, the FASB Board and staff also engage in outreach to and receive input from a variety of undisclosed sources. FASB should provide a basic level of transparency on these activities so that stakeholders can understand the nature and scope of the recommendations that influenced the proposed requirements.

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[4] FASB also sets GAAP for not-for-profit organizations.

[5] Fin. Acct. Stand. Bd., *Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting: Chapter 1, The Objective of General Purpose Financial Reporting* (as amended, Dec. 2021).

[6] *Id.* para. OB2, at 1.

[7] *Id.* para. OB8, at 2.

[8] *See supra* note 1.

Limitations on Information in Notes to Financial Statements – Adverse Consequences

Beyond its inconsistencies with the underlying objective of general-purpose financial reporting, the Proposal would notably contravene other important limitations on requirements to provide information in notes to financial statements. Critical here is the Conceptual Framework's limitation requiring the Board to "consider potential unintended adverse consequences that may arise from requiring certain information in notes."[9]

The Concepts Statements explain that "[a]ccounting standards are intended to neutrally reflect economic activity," although they "can have economic consequences, both beneficial and adverse."[10] Beneficial consequences include "fostering economic growth by promoting more efficient capital allocation, greater market liquidity, and a lower cost of capital."[11] The Concepts Statements also make clear, however, that Board should consider the following potential adverse consequences when determining whether to require a particular disclosure: legal harm; competitive harm; reputational harm; and other economic consequences that are not relevant to resource allocation decisions.[12]

In elaborating on the last category of potential adverse consequences, "other economic consequences," the Concepts Statements explain:

> While general purpose financial reporting is intended for users to make resource allocation decisions, others may use certain information in notes to financial statements for purposes other than making those decisions. In some cases, the unintended use of that information may negatively affect the entity's ability to operate in its economic, legal, political, and social environments.[13]

In spite of these explicit requirements, the *Background Information and Basis for Conclusions* section of the Exposure Draft devotes only four paragraphs to describing the Board's assessment of the Proposal's potential economic consequences, beneficial and

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[9] Fin. Acct. Standards Bd., *Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting: Chapter 8, Notes to Financial Statements* para. D22, at 6 (as amended, Dec. 2021). An additional limitation is that "including some types of future-oriented information in notes may have negative effects on the cash flow prospects of the reporting entity and its investors, lenders, and other creditors." *Id.* While the Chamber does not suggest that the proposed requirements involve disclosing future-oriented information per se, our concerns do extend to negative cash flow effects that would ensue from the Proposal.

[10] *Id.* para. D29, at 8.

[11] *Id.* para. D30, at 8.

[12] *Id.* para. D32, at 8.

[13] *Id.* at 8–9.

adverse.[14] The Board acknowledges that stakeholders have raised concerns about being required to make the proposed disaggregated income tax disclosures, particularly jurisdictional information, which "may result in adverse consequences, including competitive disadvantages and unintended regulatory scrutiny."[15]

Disappointingly, however, the Board summarily dismissed these adverse consequences due to the "sufficiently high level" of the information required to be disclosed. The Board added this conclusory statement: "the beneficial consequences of providing more disaggregated income tax information for investors to make better informed capital allocation decisions outweigh the potential adverse consequences."[16]

The Chamber is very troubled by the Board's inappropriate reliance on speculative arguments about the Proposal's potential beneficial consequences, while summarily dismissing important concerns about the Proposal's adverse consequences. All types of potential adverse consequences that the Conceptual Framework directs the Board to consider are present in this Proposal. They each require robust analysis and meaningful assessment before FASB promulgates any further income tax disclosure requirements. Relatedly, any proposed income tax disclosures must recognize the existence of confidentiality requirements to which entities must adhere to avoid adverse consequences.

Limitations on Information in Notes to Financial Statements – Cost Constraint

In addition to the limitation on footnote disclosures from adverse consequences, the Conceptual Framework includes a critical, overarching cost constraint limitation that requires the benefits of providing the information to justify the costs of providing and consuming it.[17] The Framework recognizes that "cost is a pervasive constraint on the information that can be provided by financial reporting" and "it is important that those costs are justified by the benefits of reporting that information."[18] Thus, FASB is obligated to broadly consider the potential costs of any proposed new GAAP requirements and standard updates.

As previously discussed, however, the Exposure Draft explains that "the Board does not anticipate that entities will incur significant costs as a result of the amendments in this proposed Update."[19] Setting aside adverse consequences to focus on other types of costs, such

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[14] Fin. Acct. Standards Bd., *Proposed Accounting Standards Update, Income Taxes (Topic 740): Improvements to Income Tax Disclosures* paras. BC6–BC9, at 23–24 [hereinafter "Exposure Draft"].

[15] Exposure Draft para. BC9, at 24.

[16] *Id.*

[17] Fin. Acct. Standards Bd., *Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting: Chapter 8, Notes to Financial Statements* para. D22, at 6 (as amended, Dec. 2021).

[18] Fin. Acct. Standards Bd., *Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting: Chapter 3, Qualitative Characteristics of Useful Financial Information* para. QC35, at 7 (Aug. 2018).

[19] Exposure Draft para. BC8, at 24.

as one-time and ongoing implementation and compliance costs, the Board asserts that "preparers have indicated that the information either is readily available or could be acquired via existing processes or systems without significant operability challenges."[20]

The Chamber respectfully disagrees. Implementation of the Proposal's income tax disclosure requirements would impose substantial costs on companies, many of which will have to hire additional employees to compile the rate reconciliation table and implement new procedures and controls over the process. And the financial cost of these unproductive investments is compounded by the unprecedented magnitude of competing demands currently straining the corporate tax function. Corporate tax departments are already facing debilitating resource constraints as they struggle not only to recruit and retain qualified staff in the wake of the COVID-19 pandemic but also to interpret and apply innumerable recent tax law changes. The Inflation Reduction Act of 2022 alone introduced two entirely new, ill-defined corporate tax regimes with near-immediate effective dates: the corporate alternative minimum tax and the excise tax on repurchase of corporate stock.[21] In short, it is hard to contemplate a worse time to saddle America's corporate tax departments with the responsibility to implement yet another novel and complex reporting regime.

Materiality

Materiality is a bedrock of the U.S. capital markets.[22] The materiality standard "ensures that investors have the information they need while protecting them from 'information overload' and preventing regulators or politicians from using corporate disclosure to pursue objectives that may be at odds with investor interests."[23]

The Conceptual Framework recognizes materiality as a foundational concept in GAAP standard-setting. The Framework explains that relevance and materiality are among the fundamental qualitative characteristics of useful financial information. The Board, however, distinguishes between the two concepts—namely, relevance is a general notion about what type of information is useful to investors while materiality is entity-specific.[24]

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[20] *Id.*

[21] An Act to provide for reconciliation pursuant to title II of S. Con. Res. 14, Pub. L. No. 117-169, §§ 10101–10201, 136 Stat. 1818, 1818–31 (2022).

[22] *See, e.g.*, U.S. Chamber Ctr. for Cap. Mkts. Competitiveness, *Essential Information: Modernizing Our Corporate Disclosure System* 3 (Winter 2017), https://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/U.S.-Chamber-Essential-Information_Materiality-Report-W_FINAL-1.pdf.

[23] *E.g.*, Evan Williams, U.S. Chamber Ctr. for Cap. Mkts. Competitiveness, *Effective, Material Corporate Disclosure Is the Cornerstone of U.S. Capital Markets* (Oct. 13, 2022), https://www.uschamber.com/finance/corporate-governance/effective-material-corporate-disclosure-is-the-cornerstone-of-u-s-capital-markets.

[24] Fin. Acct. Standards Bd., Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting: *Chapter 3, Qualitative Characteristics of Useful Financial Information* para. QC11, at 2 (Aug. 2018).

The “Board’s judgments about whether to establish disclosure requirements are based on broad general considerations of relevance rather than entity-specific judgments about materiality.”[25] Importantly, with respect to materiality, the Concepts Statements emphasize that:

> While disclosures have relevance to a broad range of entities, they may not be material to all entities to which they apply. Materiality decisions must be made by each individual entity. As such, the Board should establish requirements that are not so prescriptive that they preclude reporting entities from making materiality judgments.[26]

Unfortunately, the Proposal directly contravenes this explicit prerequisite with bright-line, prescriptive materiality requirements for tax disclosures that apply to all entities.

To illustrate, the Proposal requires public companies to separately disclose items in the rate reconciliation—including foreign tax effects (by jurisdiction and nature),[27] the effect of cross-border tax laws, tax credits, nontaxable or nondeductible items—if the effect of the reconciling item is equal to or greater than *five percent* of the amount computed by multiplying income (or loss) from continuing operations before tax by the applicable statutory federal (national) income tax rate.[28]

The Chamber understands that for private companies (i.e., companies other than public business entities), the Proposal would require qualitative disclosures about specific categories of items and individual jurisdictions that result in a significant difference between the statutory tax rate and the effective tax rate.[29] However, the five percent threshold will drive the determination of these qualitative disclosures.

In addition, the Proposal requires all entities, both public and private, to disclose the amount of income taxes paid (net of refunds received) disaggregated by individual jurisdictions

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[25] Fin. Acct. Standards Bd., *Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting: Chapter 8, Notes to Financial Statements* para. D23, at 6 (as amended, Dec. 2021).

[26] *Id.* at 6–7.

[27] For example, according to the Exposure Draft, “[I]f a foreign jurisdiction meets the 5 percent threshold, it would be separately disclosed as a reconciling item. Within any foreign jurisdiction (regardless of whether it meets the 5 percent threshold), the reconciling item would be separately disclosed by nature if its gross amount (positive or negative) meets the 5 percent threshold. In some cases, a foreign jurisdiction in total may not meet the 5 percent threshold, but there could be individual reconciling items, which meet the 5 percent threshold, disclosed for that foreign jurisdiction.” Exposure Draft para. 20, at 27.

[28] *See* Exposure Draft at 2. These rate reconciliation requirements would apply to annual reporting. On an interim basis, among other requirements, public companies would need to provide a description of any reconciling items that result in significant changes in the estimated annual effective tax rate from that of the prior annual reporting period. *Id.* at 3.

[29] Exposure Draft at 3.

in which income taxes paid (net of refunds received) is equal to or greater than *five percent* of total income taxes paid (net of refunds received) on an annual basis.[30]

The Board argues that the five-percent threshold is consistent with the existing SEC Regulation S-X 210.4-08(h)(2) applied by public companies.[31] But this does not justify the bright-line disclosure requirements of five percent. FASB's Conceptual Framework does not apply to SEC rulemaking per se, the expansive income tax disclosure requirements in the Proposal go well beyond the specifics of SEC Reg S-X, and the proposed quantitative threshold would affect all entities—not just public companies.

The Chamber recognizes that the proposed disclosure requirements, as with all GAAP guidance, is in accordance with FASB Codification paragraph 105-10-05-6 and need not be applied to immaterial items. The *Background Information and Basis for Conclusions* section of the Exposure Draft reminds of the Board's observation that "the amendments in this proposed Update on disclosure of reconciling items by specific required categories with further disaggregation based on the application of quantitative thresholds would not apply to immaterial items."[32] Similarly, "the amendments in this proposed Update on disclosures of income taxes paid based on the application of a quantitative threshold would not apply to immaterial items."[33]

At the same time, however, we note that the Board's observations on the application of guidance on immateriality lack substance and would encounter a myriad of practical challenges for preparers to implement in the face of the bright-line prescriptive requirements of five percent. Moreover, the observations do not consider the realities of having GAAP requirements for disclosure of information in the notes to annual (interim) financial statements that are subject to audit (review). For example, on issuer and broker-dealer engagements, any auditor judgments on immateriality that do not comport with the bright-line thresholds would be ripe for second guessing during inspections by the Public Company Accounting Oversight Board ("PCAOB"). Moreover, both preparer and auditor judgments on immateriality would carry increased risks in litigation and regulatory enforcement.

Here again, the Chamber respectfully urges FASB to withdraw and reconsider the Proposal—all bright-line, prescriptive materiality requirements should be removed. FASB should not broadly invoke any quantitative materiality thresholds. Instead, it is incumbent on FASB to ensure that any proposed revisions in income tax disclosure requirements align with the Conceptual Framework provision that materiality is entity specific.

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[30] *Id.*

[31] Exposure Draft para. BC19, at 27.

[32] *Id.* para. BC15, at 26.

[33] *Id.* para. BC27, at 29.

Additional Considerations

Disclosure Complexity and Overload

The Chamber reminds the Board that disclosure requirements for income taxes are already very extensive and information overload continues to be a concern. Tax laws—federal, state and local, and foreign—and GAAP requirements related to the recognition and measurement of taxes are exceedingly complex, and both require a myriad of judgments. Determinations of items such as current and deferred tax expense, current and deferred taxes payable/tax assets, taxes paid, uncertain tax positions, and differences between statutory and effective tax rates require a robust understanding of tax laws and GAAP, along with the permanent and temporary differences between them.

Given the context and complexities of income taxes globally, there are inherent limitations to the decision-usefulness of income tax-related information. Disclosure of the granular information as proposed—both quantitative and qualitative—would not be decision-useful because understanding it would require much more extensive context and time-series (multi-year) information than can or should be provided in GAAP footnotes. Simply put, the proposed income tax disclosures would raise more questions than they answer.

The Chamber strongly recommends that FASB avoid tipping into information overload and reconsider the Proposal—maintaining disclosure effectiveness as top of mind in proposing any new income tax disclosure requirements.

Problematic Aspects of the Proposed Disclosures

Rate Reconciliation

In the Exposure Draft, the Board acknowledges that judgment may be necessary when determining how to categorize certain income tax effects that have characteristics of multiple categories or when assessing the nature of reconciling items for further disaggregation.[34] Some practitioners have interpreted this acknowledgment to mean that the impacts of cross-border regimes like global intangible low-taxed income (“GILTI”) or subpart F income inclusions should be presented separately from any related deductions or foreign tax credit amounts that ultimately reduce a company’s net tax impact from such regimes.[35]

The Chamber respectfully recommends that the impacts of such cross-border items be considered net of any related deductions or foreign tax credit amounts instead of being disaggregated into separate categories. In particular, the Chamber recommends deleting the

[34] Exposure Draft para. BC18, at 27.

[35] For instance, domestic corporations are currently subject to a reduced effective rate of U.S. tax on their GILTI by means of a deduction in section 250 of the Internal Revenue Code (“section 250 deduction”).

requirement to disclose foreign tax credits and clarifying that GILTI is presented on a net basis—net of GILTI, section 250 deduction, and GILTI foreign tax credit. A U.S. multinational corporation's foreign tax credit can encompass credits from general limitation income, passive activity income, GILTI inclusions, and branch operations with complex application of disregarded payment rules and expense allocation rules. The separate disclosure of such foreign tax credit amounts would therefore be extremely difficult for an investor without U.S. international tax law expertise to comprehend, especially in cases where the corporation's total foreign tax credit is greater than the tax on GILTI before the GILTI foreign tax credit.

Transition and Effective Date

Finally, the Exposure Draft states that the proposed income tax disclosure requirements would be required to be applied on a retrospective basis. As explained above, however, implementation of the proposed changes would impose substantial costs on companies, many of which would have to hire additional employees to compile the rate reconciliation table and implement new procedures and controls over the process. The Chamber therefore recommends that FASB specify a more rational effective date for any of the proposed changes that it may ultimately adopt, which should apply no earlier than to fiscal years beginning *after* December 31, 2024.

Concluding Remarks

Given the breadth and depth of the concerns articulated herein, the Chamber respectfully urges FASB to withdraw and reconsider the Proposal.

The Chamber stands ready to assist FASB in its efforts to develop effective disclosures that convey material, decision-useful information for market participants while maintaining the important objectives of mitigating disclosure ineffectiveness and financial reporting complexity.

Sincerely,

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