March 22, 2016

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The Honorable John Koskinen
Commissioner
Internal Revenue Service
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Mr. Mark J. Mazur
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: IRS REG-109822-15: Country-by-Country Reporting

Dear Commissioner Koskinen and Mr. Mazur

Thank you for the opportunity to comment on the proposed rule to implement Country-by-Country (CbC) Reporting by multinational companies. Americans for Tax Fairness (ATF), a coalition of over 425 organizations representing tens of millions of individual members, fully supports your efforts to implement our international obligations in this area and to begin addressing the problem of profit shifting by multinational companies.

ATF works for comprehensive, progressive tax reform that results in greater revenue to meet our nation's growing needs. The corporate tax system is in particular need of reform. Too many large, profitable corporations use 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 are critical to identifying this form of corporate tax dodging and finding solutions to remedy it. In 2015, ATF conducted two investigations of corporate tax avoidance that illustrate the problem with a lack of corporate transparency.

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. This was the first-ever public documentation of Walmart's subsidiaries in tax havens,

mostly because Walmart has never openly reported their existence in the U.S. Securities and Exchange Commission (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 the data for this report required hundreds of hours of labor to discover these subsidiaries and unearth 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.

Our report 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 – and that it is paying a fraction of its claimed worldwide tax rate because of deferred taxes also entailed significant accounting detective work. 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.

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.

For all of these reasons, we are keen to see a robust implementation of the OECD CbC reporting standard and, where appropriate, a stronger version of that standard implemented in the United States. For this reason, we endorse the attached submission by the Financial Accountability and Transparency (FACT) Coalition.

Sincerely,

Frank Clemente
Executive Director