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Richard R. Jones
Chair
Financial Accounting Standards Board
801 Main Avenue
Norwalk, CT 06851

Dear Chair Jones and Members of the Board:

CFA Institute[1], in consultation with its Corporate Disclosure Policy Council ("CDPC")[2], appreciates the opportunity to comment and provide its perspectives on the Financial Accounting Standards Board ("FASB" or "Board") Proposed Accounting Standards Update, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures* ("2023 Proposed Update").

CFA Institute has a long history of promoting fair and transparent global capital markets and advocating for strong investor protections. We are providing comments consistent with that tradition. An integral part of our efforts toward meeting those goals is ensuring that corporate financial reporting and disclosures and the related audits provided to investors and other end users are of high quality. Our advocacy position is informed by our global membership who invest both locally and globally.

SUMMARY OF OUR VIEWS

We provide our views and recommendations on the specific changes in the 2023 Proposed Update in the *Comments on Specific Provisions of The Proposal* section. We provide historical context for our response in the *Overarching Considerations* section. This section summarizes our views.

We have undertaken an extensive consideration of the 2023 Proposed Update in our response because it is that more extensive consideration, which we present herein, that has led us to insights and conclusions which many investors may not have had the time or opportunity to arrive at during brief outreach meetings.

We do not believe the FASB should conclude that improvements in decision-useful information result from the proposed changes without providing investors with a robust articulation and discussion of definitional, computational, and theoretical issues – as well as the collective result from the proposed changes – as we have undertaken herein. One must get behind the illustration to determine what will result from the changes in the 2023 Proposed Update.

[1] With offices in Charlottesville, New York, Washington, DC, Brussels, Hong Kong, Mumbai, Beijing, Shanghai, Abu Dhabi and London, CFA Institute is a global, not-for-profit professional association of more than 190,000 members, as well as 160 member societies around the world. Members include investment analysts, advisers, portfolio managers, and other investment professionals. CFA Institute administers the Chartered Financial Analyst® (CFA®) Program.

[2] The objective of the CDPC is to foster the integrity of financial markets through its efforts to address issues affecting the quality of financial reporting and disclosure worldwide. The CDPC is comprised of investment professionals with extensive expertise and experience in the global capital markets, some of whom are also CFA Institute member volunteers. In this capacity, the CDPC provides the practitioners' perspective in the promotion of high-quality financial reporting and disclosures that meet the needs of investors.

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For this reason, we cannot agree with the FASB's conclusion that these proposals represent a material improvement in decision-useful information without the significant revisions we articulate in the last section of this summary and without addressing the other changes investors have advised are necessary, but which have been removed under the "achievable standard setting" approach.

Context for Our Response

The project on income tax disclosures has been in progress for nearly a decade with an initial consultation request in 2016 ("2016 Proposed Update") and a subsequent consultation request in 2019 ("2019 Proposed Update"). Given the significant duration of the project and the complexity of the topic of income taxes, we felt it necessary to review the evolution of changes proposed over time and relative to our previous commentary to respond to this third consultation most effectively.

Changes in Scope of Income Tax Disclosure Project Over the Last Decade – The **Appendix** provides an analysis of the evolution of the FASB's proposed changes in 2016, through to 2019 and now in the 2023 Proposed Update. Over the last decade, the FASB has steadily reduced the scope of the improvements in the income tax disclosures project settling in this 2023 Proposed Update on revisions to the rate reconciliation and cash taxes paid – along with removing disclosures related to deferred income tax liabilities related to cumulative undistributed earnings in foreign subsidiaries and management's expectations of the changes in unrecognized tax benefits.

Improvements in Income Tax Disclosures Sought by Investors – Our 2016 comment letter[3] provided a comprehensive inventory of income tax disclosure improvements sought by investors. In the *Overarching Considerations* section, we summarize those 2016 recommendations along with how the 2023 Proposed Update stacks up against those improvements. The FASB's progressive and substantial reduction in scope of the project results in proposed revisions that fall far short of what investors articulated as necessary in 2016. CFA Institute supported most of the proposed revisions in the 2016 Proposed Update and other investors sought even more significant disclosures by jurisdiction. From review of investor comment letters to the 2016 and 2019 Proposed Updates we do not see investor support for the FASB limiting the disclosure improvements to the rate reconciliation and cash taxes paid. Further, we did not support removal of the disclosure of management's expectations of the changes in unrecognized tax benefits – and we see no evidence that other investors supported the removal of this disclosure – or the disclosure related to cumulative undistributed earnings in foreign subsidiaries.

In the body of our letter – in the *Overarching Considerations* section – we express our concern that the FASB's "achievable standard setting" approach has focused on reducing the scope of improvements in financial reporting and disclosures that investors have requested, making only marginal changes to highlight progress on lengthy projects which have not yielded improvements. But the FASB has not simultaneously articulated a plan or path forward for addressing items removed from the scope of this, and other, projects which investors have communicated are important. As we highlight in the body of this letter, we do not see how the changes proposed in the 2023 Proposed Update address, for example, the findings of the Financial Accounting Foundation's ("FAF's") own post-implementation review on income tax disclosures.

Consultation Response Requires Extensive Consideration – Responding to consultations on complex topics such as income taxes is a time-consuming undertaking for all stakeholders, but particularly for investors as it requires more than a cursory inquiry and consideration of an illustration of what the proposed changes might yield. This illustration approach may, at first glance in a quick call between the

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[3] We did not respond to the 2019 consultation as we believed we had provided a thoughtful and comprehensive analysis of what investors believed was needed to improve income tax disclosures in our 2016 comment letter.

FASB and investors, leave investors with an impression that this will be an improvement. But greater communication of the definitional, computational, and theoretical underpinnings of the rate reconciliation amendments – as well as how the proposed revisions will operate together – is necessary for investors to reach an informed conclusion.

Responding requires an understanding of the US tax law changes during the last decade; the change in the political discourse on income taxes; what investors have previously advised the FASB they need in improvements of income tax disclosures; what the precise wording within the 2023 Proposed Update actually says and will yield; and what the numbers in illustrations of proposed disclosures economically represent. Our analysis includes consideration of all proposed changes (i.e., including those issues which remain important to investors such as unrecognized tax benefits and cumulative undistributed earnings in foreign subsidiaries which were outside the FASB's outreach).

As we note above, we have undertaken this more extensive consideration because it is that effort that has led us to insights and conclusions which other investors have not had the time or opportunity to arrive at during outreach meetings.

Analysis of FASB's Key Changes

The FASB leans heavily into amendments to the rate reconciliation (including focusing investors on the illustration at Paragraph 740-10-55-231) and cash paid for income taxes as a means of attempting to convey to investors that they will have more disaggregated information in the rate reconciliation upon adoption of the changes in the 2023 Proposed Update. We consider these key changes in detail in the body of the letter but summarize them here.

The Rate Reconciliation: Beginning with the US Statutory Rate Is Not Necessarily Decision Useful[4] – We believe the FASB has more to do to explain why a rate reconciliation which begins with the US domiciliary statutory rate for US companies when the US is no longer a worldwide taxing system is theoretically sound. We also believe more guidance on how the foreign effects disclosures are computed is necessary.

As part of our background work, we considered the 2017 Tax Cuts and Jobs Act ("TCJA or "2017 TCJA") passed into law in late 2017, which changed the US from a worldwide to a more territorial taxing system[5]. The FASB notes this change as a reason[6] to remove several disclosures in the 2019 Proposed Update including the disclosure regarding cumulative deferred tax liabilities related to recognition exceptions on undistributed earnings in foreign subsidiaries.

What we believe the FASB does not consider in the 2023 Proposed Update is that the 2017 TCJA – in moving to a more territorial system – makes a US GAAP rate reconciliation which begins with a US statutory rate less relevant or decision-useful to investors. For example, as we describe under the discussion of the rate reconciliation in the *Comments on Specific Provisions of The Proposal* section, the tax rate differentials being illustrated[7] in the example provided and discussed with investors are not likely reflections of tax risk faced by the company making the disclosures, but simply differences created by

[4] We recognize that the FASB's 2023 Proposed Update requires application of the domiciliary statutory rate as the starting point for the rate reconciliation. Given that US GAAP is most broadly and significant applied to companies domiciled in the US we make our commentary regarding the application of the US statutory rate and the US taxing system with that in mind.

[5] We explain this in more detail in body of the letter at the section: *Is a Rate Reconciliation from the US Statutory Rate Still Meaningful Given the Move from a Worldwide to a Territorial Tax System*

[6] See Paragraphs BC29 to BC35 in the 2019 Proposed Update Basis for Conclusions and Paragraph BC36 in the 2023 Proposed Update Basis for Conclusions.

[7] See Paragraph 740-10-55-231 of the 2023 Proposed Update.

starting the reconciliation with the US statutory tax rate, which the foreign subsidiaries are not likely to pay. This is not a point of conversation in outreach to investors as we have experienced it.

As we discuss in the *Overarching Considerations* section, many investors have called for country-by-country disclosures to better understand the tax risk of multinational organizations. As we also describe there, we understand the need to provide jurisdiction specific information – balancing that against the risk to investors of other stakeholders using such disclosures to lobby for higher taxes and diminishing the value of investors interests.

The FASB has implied that the proposed amendments to the rate reconciliation – specifically the foreign effects disaggregation, along with cash paid for taxes by significant foreign jurisdiction – will suffice in meeting investors country-by-country request. We are not convinced of this because, the change in the US taxing system makes it unlikely that the tax rate differential disclosed in that rate reconciliation represents a tax risk as it is not likely a tax that ever is to be paid. For US companies with mostly foreign earnings this US statutory rate reconciliation could actually be misleading, rather than decision-useful. Further, there is a lack of clarity on what jurisdictions and reconciling items are to be disclosed and guidance on the mechanics of how the items within the foreign effects disaggregation are computed – which determines how numbers in the reconciliation are derived, whether they will be disaggregated for disclosure and what they represent. We provide examples of the computational challenges in the body of the letter.

The illustration provided to investors during outreach does not communicate these theoretical or computational challenges which are integral as to what the numbers derived represent and whether the items presented in the rate reconciliation are decision-useful. Further, the rate reconciliation provides only current period rather than cumulative tax exposures.

The Rate Reconciliation: Changes Proposed in Categorization and Disaggregation of Reconciling Items – The section above, describes the broader theoretical question we have as it relates to the overall domiciliary rate reconciliation as well as the foreign effects category disaggregation criteria the FASB has proposed. Below are our thoughts on the other proposed revisions to the rate reconciliation.

- *Creation of Eight Disclosure Categories* – While creation of the eight standard categories within the rate reconciliation might create greater uniformity across companies, if these categories are already, as the FASB states, widely understood and used by preparers, we are not convinced adding them – particularly without definitions of the categories, which are understandable to investors – will add much to the decision-usefulness of the rate reconciliation as we illustrate through the Ford example in the body of the letter.
- *Incorporation of Existing SEC Guidance* – As the SEC rule already requires disaggregation of all "reconciling items over 5% of statutory tax expense" irrespective of the eight categories now required, we aren't necessarily convinced greater disaggregation will ensue – particularly given four of the eight categories (state and local income tax, net of federal (national) income tax effect; enactment of new tax laws; valuation allowances; and changes in unrecognized tax benefits) require no further breakdown – something investors requested in 2016.
- *Three Categories Requiring Disaggregation by Nature* – For those three areas (cross-border tax laws; tax credits; and non-taxable or non-deductible items) the FASB would now require disaggregation by nature. The question remains as to whether companies perceive they have not already provided the best description by nature under existing SEC rules. We aren't convinced the illustrative example will necessarily guide preparers toward more detail.
- *Description of Reconciling Items* – We also believe the disclosure by nature and a description of year-over-year changes in a reconciling item within the categories provides little insight into the

persistency of reconciling items into the future. Investors need greater description of the nature of the item (not simply a caption) and whether it is expected to persist into the future for it to be decision-useful in their projection of future effective tax rates.

Cash Paid for Income Taxes by Jurisdiction: Only Pieces of the Puzzle – The FASB also leans in heavily on the new cash paid for income taxes disclosures (i.e., disclosures of cash paid for any jurisdiction exceeding 5% of a company's total tax payments) as assisting investors in their understanding of tax risks. And while we support these disclosures, we do not support them in isolation. The challenge, as we explain it in the body of the letter, is that such disclosures are pieces of the puzzle but are not sufficiently contextualized by reference to foreign earnings or foreign income taxes and without an ability, through balance sheet rollforwards, to connect the disclosures to the basic financial statements.

Further, delays in payment of taxes; significant and unusual tax payments; and the fact that the amounts are not disclosed by tax year on a gross and net basis, limits the usefulness of such disclosures to investors. Investors need the cash taxes paid, gross and net, in each calendar year by tax year and the aforementioned contextualization to foreign earnings, foreign tax expense and the balance sheet accounts to make this information useful. Only with more detail on the cash paid for taxes and the greater contextualization will the information be useful to investors.

Our Proposal: Separate Domiciliary and Foreign Rate Reconciliations – We recognize the call for jurisdiction specific tax disclosures by some investors. We also understand the efforts other stakeholders – who under the narrative of seeking to help investors understand tax risk – are really seeking to increase taxes on corporations, and investors as the ultimate owners of such organizations. As such, we recognize the need to balance the level of disclosure and the need to connect the disclosures to financial statements – not necessarily information disclosed to taxing authorities.

We simultaneously recognize the challenge presented to investors of puzzling together the proposed cash paid for taxes and rate reconciliation disclosures in an attempt to create a picture of foreign taxes and the related risks. We do not believe the FASB recognizes that this puzzle pieces approach is no longer sufficient as a means of disclosure to investors given the rise in passive investing and the far fewer number of sell side analysts and active buy side investors doing the research and puzzling together of disclosures. The FASB also does not seem to consider the reality that financial statements are being accessed and consumed fact-by-fact electronically.

As we have outlined in the *Comments on Specific Provisions of The Proposal* section, we present an alternative rate reconciliation proposal that we believe would provide greater contextualization. Our proposal is that the FASB – using the disaggregation principles proposed, with adjustments as we have recommended – require a separate domiciliary country earnings rate reconciliation and total foreign earnings rate reconciliation – with the latter using a weighted average statutory rate weighted based upon earnings in the respective jurisdictions.

This approach would address the fact that the US has moved from a worldwide to a more territorial tax system and create a better comparison with purely domestic companies. It would also provide a more meaningful foreign income tax disclosure without giving jurisdiction-by-jurisdiction information but giving weight to the most significant jurisdiction through the weighted average statutory rate. Going this route has greater potential of alerting investors to the presence of preferential tax arrangements in specific countries without revealing the specific details of these arrangements. Further, this separation of the domiciliary and foreign rate reconciliation may give greater insight into the impact of implementation of global minimum taxes and other cross-border tax effects. Still further, a total foreign earnings rate

reconciliation would make the disclosure of cash taxes paid by jurisdiction more reconcilable and meaningful for investors – providing some contextualization for these puzzle pieces.

We believe this rate reconciliation proposal should also be accompanied by improvements in the cash paid for taxes disclosure. We believe a rollforward of current taxes receivable/payable by domestic and foreign – reconciling to the cash taxes paid by jurisdiction; foreign and domestic income taxes; and the balance sheet – would be useful in contextualizing the cash paid for taxes. A rollfoward of deferred tax assets/liabilities by foreign and domestic would also be necessary.

Considering the Proposed Revisions in the Aggregate: Enhancements Needed to Understand Tax Risks and Opportunities

We have considered all the FASB's proposed changes individually, but most importantly, we have sought to consider the substance of the revisions in their totality and what the overall result will be for investors in better understanding tax risks and opportunities.

Summing Up the Changes – In the aggregate, the FASB is simply incorporating into the Codification existing features of the SEC's income tax disclosure requirements related to both the:

i. disclosure of income before tax and income taxes by foreign and domestic, and
ii. 5% disaggregation threshold related to the rate reconciliation.

These are existing features of public company reporting and don't represent enhancements to US GAAP for public companies brought about by this 2023 Proposed Update.

The FASB is then layering on to the rate reconciliation the need to:

i. provide the reconciliation in both amount and percentage terms;
ii. present the reconciliation in eight categories, which they note are already widely in use and understood by preparers;
iii. present greater disaggregation by nature of only three of the eight categories (cross-border tax laws, tax credits, and nontaxable and nondeductible items); and
iv. present greater disaggregation of the foreign effects category by nature and jurisdiction.

The FASB doesn't, however, provide a definition of the eight categories, require disaggregation by nature of four other categories (state and local income tax, net of federal (national) income tax effect; enactment of new tax laws; valuation allowances; and changes in unrecognized tax benefits) nor clearly articulate how foreign effects disclosures are determined and computed, and what they represent.

The FASB also adds the requirement to disclose cash paid for taxes by significant jurisdiction but doesn't provide information to understand the year to which the payments relate or the nature or behavior of the payments. Nor does the FASB contextualize these disclosures connecting them to foreign earnings, foreign income tax or balance sheet amounts.

The FASB also removes the disclosures related to cumulative deferred tax liabilities on undistributed earnings in foreign subsidiaries and management's expectations of the changes in unrecognized tax benefits. Both of which, particularly the latter, clearly provide useful information on tax risks and opportunities.

The Changes in the Context of the FASB's Overall Objective – The FASB states its objective in the 2023 Proposed Update is to…*allow investors to better assess, in their capital allocation decisions, how an entity's worldwide operations and related tax risks and tax planning and operational opportunities affect its income tax rate and prospects for future cash flows*….but, the FASB doesn't articulate precisely how these changes address specific tax risks or how they operate together to achieve this overall objective. Investors are left to that determination.

We believe the FASB needs to be more specific regarding which tax risks and opportunities the disclosures they are proposing address to enable investors to assess whether they are in agreement that the objective has been achieved.

Though the FASB has not articulated which specific tax risks and opportunities the changes in the 2023 Proposed Update they are proposing are meant to address, our recommendations that follow, and which are more extensively explained in the body of the letter, have been made with respect to consideration of the following risks and what we believe is needed by investors to better utilize these disclosures in understanding and valuing such risks:

- *Estimation of Future Effective Tax Rates* – If the FASB is seeking to facilitate investors understanding of the persistency of historical effective tax rates, investors need to understand each of the eight categories within the rate reconciliation and each category needs to be subject to disaggregation – not simply half of them. The reconciling items also require an explanation which provides sufficient description of the item including its persistency. Without this, the rate reconciliation may be more organized and historically more understandable but not necessarily decision-useful to investors. Further, removal of management's expectations regarding unrecognized tax benefits directly reduces the effectiveness of the rate reconciliation which requires the inclusion of such items when they manifest as a separate rate reconciling item.
- *Foreign Tax Planning and Risk* – If the FASB is seeking to convey to investors the risk of a company's multi-jurisdictional tax situation, risks or planning, we don't believe the foreign effects disclosures within the rate reconciliation accomplish this without: i) better articulation of what the reconciling items represent in a world-wide rate reconciliation, ii) how they facilitate an understanding of foreign earnings and foreign taxes by jurisdiction, and iii) how investors can connect those foreign earnings and tax to the cash paid for taxes in the respective foreign jurisdiction. Investors need to be able to gross up the rate differential to arrive at foreign earnings. They then need to utilize the foreign reconciling items at the foreign statutory rate to arrive at a country-by-country rate reconciliation and effective rate in the respective jurisdiction. This reconciliation can then be compared to a normalized annual cash paid for income tax in the jurisdiction. Both the foreign effects rate reconciliation disclosures and the cash paid for foreign taxes by jurisdiction are sufficiently flawed in their proposed state that they likely won't provide more decision-useful information to investors.
- *Understanding of Cash Flows Related to Income Taxes* – If the FASB is seeking to provide investors insight into the impact on cash paid for income tax in both domestic and foreign jurisdictions, disclosures need to be gross and net, by calendar year, and with separate disclosure of unusual items with context and connection to the financial statements that rollforwards would provide. Without knowing the normalized level of cash paid for taxes investors can't assess how a change in tax rate will impact future income taxes and cash paid for income taxes.

The FASB should specifically articulate how the disclosures they are proposing – without the improvements and contextualization we suggest – address tax risks of concern to investors.

Required Changes – As we consider these limited changes collectively, we note the following are necessary for investors to conclude these changes are useful:

- Greater definition of the eight categories within the rate reconciliation such that they are understandable to investors and consistently used by preparers;
- Disaggregation by nature and more definitive criteria for all eight categories, not simply four of the categories;
- Resolution of the questions we have highlighted regarding the foreign effects disaggregation language and the computational issues and the relevance of a worldwide rate reconciliation for US GAAP given the change in the US taxing regime;

- Addition of a description of the persistency of reconciling items within the rate reconciliation;
- A rate reconciliation that is disaggregated between foreign and domestic with the foreign reconciliation commencing with the weighted average statutory rate;
- Cash paid for taxes, gross and net, by calendar year for each significant jurisdiction along with identification of payments for significant or unusual items and accompanied by current and deferred balance sheet account rollforwards by domestic and foreign tax expense;
- Retention of management's expectations regarding unrecognized tax benefits disclosure – which truly highlights forward tax risks or opportunities; and
- An explanation of why the cumulative – but not the periodic – undistributed earnings in foreign subsidiaries has been removed if a worldwide rate reconciliation remains relevant.

We make additional recommendations and observations regarding other changes in the pages which follow.

And, as we note above, we believe the FASB needs to advise investors with respect to the plan going forward to address the other income tax disclosures investors previously advised FASB are necessary. The FASB also needs to address how the proposed changes address the FAF's post-implementation review findings related to income tax disclosures.

OVERARCHING CONSIDERATIONS

Later in this comment letter, in the section titled *Comments on Specific Provisions of The Proposal,* we provide our views on the specific changes outlined in the FASB's 2023 Proposed Update. Here we provide historical background and context for those comments and several overarching considerations or observations.

FASB's Previous Consultations on Income Tax Disclosures

This 2023 Proposed Update, as set forth below, is the third consultation on improving tax disclosures over the last decade as follows:

July 2016 Proposal: On July 26, 2016, the Board issued a proposed Accounting Standards Update, *Income Taxes (Topic 740) Disclosure Framework: Changes to the Disclosure Requirements for Income Taxes*. We refer herein to this consultation as the 2016 Proposed Update. The comment letters on that proposal are available on the FASB's website. CFA Institute issued a comment letter on that 2016 proposal.[8]

March 2019 Proposal: On March 25, 2019, after receiving substantial comment on its 2016 proposal, the FASB issued a revised proposal, Accounting Standards Update (revised), *Income Taxes (Topic 740): Disclosure Framework Changes to the Disclosure Requirements for Income Taxes*. We refer herein to this consultation as the 2019 Proposed Update. The comment letters on that proposal are available on the FASB's website.[9] CFA Institute did not comment on the 2019 Proposed Update as we had provided our comprehensive list of investor needs (which we summarize below) to the FASB in our 2016 comment letter. Additionally, we were not convinced of the FASB's commitment to move forward with those recommendations and whether the time necessary to respond would be well spent.

March 2023 Proposal: The 2023 Proposed Update – the focus of this comment letter – principally represents two very narrow amendments to income tax disclosures (i.e., the rate reconciliation and cash

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[8] Of the 58 comment letters received only three represent a pure investor, value-oriented perspective. Several others convey a more civil society-oriented perspective.

[9] Of the 42 comment letters received only one collection of investors responded noting that the 2019 Proposed Update fell far short of the modifications needed. Those investor organizations were those with a more civil society or other stakeholder agenda, and they did not address the need to balance the risk (i.e., higher taxes) that additional disclosures may create for investors.

paid for taxes) despite nearly a decade of work and consultation on the subject. Further, it proposes changes to disclosures related to undistributed earnings in foreign subsidiaries and management's expectations regarding unrecognized tax benefits, which the FASB notes were supported by respondents to the 2019 Proposed Update, but which we cannot find any investor organization commenting upon during that consultation period[10].

The main takeaway from our 2016 comment letter is that investors considered existing company tax disclosures to be well short of what they needed. Investors rely on these disclosures to forecast companies' tax expense and to project companies' cash flows – as well as understand potential tax risk. Investors, as we noted then, are, however, challenged to complete these important analytic exercises given the disclosures provided.

In the 2023 Proposed Update the FASB has revised its position on needed tax disclosure improvements even further. As we illustrate in the chart in the **Appendix** – which is illustrative, but not exhaustive – each successive proposal has reduced the enhancements of disclosures to investors during a period where there has been increased focus on tax strategy and cross-border tax risks and uncertainties which investors must consider in completing the aforementioned analytical exercises.

We evaluated the 2023 Proposed Update with this as the backdrop. While we understand the passage of the 2017 Tax Cuts and Jobs Act may have delayed progress from 2016 to 2019, there are many elements of improvement that investors sought in 2016 which had nothing to do with the 2017 TCJA and which remain unaddressed by the FASB in the 2023 Proposed Update. For example, better rollforwards of tax related accounts. As we note in the *Comments on Specific Provisions of The Proposal* section which follows, we also find that some of the revisions in the 2023 Proposed Update may need to consider the broader conceptual changes to the US tax system brought about by the 2017 TCJA.

Improvements in Tax Disclosures Sought by Investors Circa 2016

We opened our 2016 comment letter with the following observation:

> *We strongly support the objectives of enhancing income tax disclosures, as investors depend heavily on these disclosures to* ***understand prior period reported earnings and cash flows and to predict future tax-related cash flows****. For example, an investor's assumption regarding the persistent portion of the effective tax rate is a critical input for the valuation of companies, and investors require meaningful granularity of information within the disclosures to arrive at an accurate, economically relevant adjusted effective tax rate. Furthermore****, deferred tax assets/liabilities (DTA/L) can be potentially predictive of future tax cash flows and can also be an indicator of earnings quality****. Similarly,* ***unrecognized tax benefits can be potentially predictive of future tax cash flows****.*
>
> *In addition to their key role in determining the value of a business, tax disclosures have become of increasing interest to investors due to the widespread use by companies of aggressive tax strategies. An aggressive tax strategy can create operational, reputational, and legal risks.* ***Investor concerns about tax-related risks have intensified of late due to increased corporate tax investigations and enforcement actions around the globe, as well as increased cooperation among governments to curb multinational tax abuse.***
>
> *In short,* ***tax information is a topic of great interest to financial analysts, but current tax disclosures do not always provide sufficient information about a business entity's tax practices, liabilities, and risks****.*

[10] As we note in the *Comments on Specific Provisions of the Proposal* section which follows, the FASB indicates in the Basis for Conclusions to the 2023 Proposed Update (Paragraph BC 36) that such changes carryforward from the 2019 Proposed Update and were supported by respondents to that consultation. Only one investor responded to that consultation and did not comment on those revisions. As such, the FASB does not appear to have documented investor support for such changes. CFA Institute comment in opposition to the change in the unrecognized tax benefits disclosures in our 2016 comment letter.

Against this backdrop, in our 2016 comment letter, we provided a list of specific improvements – including changes in existing disclosures and the addition of new disclosures – that investors told us were needed to make companies' tax-related information complete and decision-useful. Below we reiterate those points as well as investor views on other proposed disclosures at, and since, that time.

1. ***Improved Presentation*** – Investors told us they often found companies' existing tax-related disclosures to be confusing and that they'd like to see better integration of tax disclosures both within and between financial statements. Improved disclosures regarding income tax expense (current and deferred by jurisdiction and in total); cross referencing of tax information; and greater disaggregation of current taxes payable/receivable – as well as the disaggregation of deferred-tax assets and deferred-tax liabilities on companies' balance sheets – were noted as being needed. Additionally, we highlighted the need for greater tabular presentation and use of charts. We do not see the FASB has made significant enhancements related to this item in the 2023 Proposed Update.

2. ***Ease of Reconciliation of the Components of Tax Disclosure to Individual Financial Statement Line Items*** – Investors told us that all too often even the most basic of reconciliations proved challenging, if not impossible. A good example is the reconciliation of the current tax receivable/payable component on companies' balance sheets. Investors indicated it did not tie-out (reconcile) when they attempted to reconcile using tax expense reported in income statements and tax payments reported in cash flow statements. The key point being the FASB needs to require disclosure of rollforwards of key tax-related balances including a company's current taxes payable/receivable, deferred taxes receivable/payable and deferred tax asset valuation allowance. We do not see the FASB has made significant enhancements related to this item in the 2023 Proposed Update.

3. ***Rate Reconciliation*** – In 2016 we advised the FASB that investors supported the incorporation of the SEC guidance that would require separate presentation of individual amounts greater than 5% of the total. We noted that investors needed an explanation of the reconciling items and changes in the reconciling items from year to year. We noted, however, that investors were concerned that there is a risk that some companies will aggregate too many items under the "other – less than 5%" category. While we did not explicitly articulate it in 2016, we always supported disclosure of the rate reconciliation in both amounts and percentages and support the FASB's proposed changes in the 2023 Proposed Update in this regard. In the *Comments on Specific Provisions of The Proposal* section which follows, we provide our comments on the FASB's other proposed changes related to the rate reconciliation in the 2023 Proposed Update.

4. ***Disclosure of Cash Paid for Taxes and Tax-Related Interest and Penalties & Cash Held in Foreign Jurisdictions*** – We noted in our 2016 comment letter that investors wanted better disclosures of the interplay between tax and cash flows. Investors sought disclosure of cash paid for taxes, by jurisdiction, as well as cash paid for tax-related interest and penalties as such information would shed light, investors told us, on the tax liability by jurisdiction and the degree to which a company had been unable to defend tax positions with tax authorities. Such information was sought disaggregated by current from all prior periods. As we note, below in #8, cash taxes paid related to "toll taxes" would be another cash disclosure of interest to investors.

   Further, we also noted in 2016 that we supported the disclosure of cash, cash equivalents, and marketable securities by foreign subsidiaries such that we could ascertain if such cash, possibly stranded in those jurisdictions, was available for dividends and other capital allocation purposes.

   In the *Comments on Specific Provisions of The Proposal* section which follows, see our comments related to the changes in cash paid disclosures in the 2023 Proposed Update relative to the above comments.

5. ***Disaggregation of Foreign and Domestic Components*** – In 2016 we noted our support – as we touch upon above – for greater disaggregation of the foreign and domestic components of tax expense and cash paid for taxes. We emphasized the need for the disclosure of such items in material foreign jurisdictions and greater transparency on the tax rates and differentials in both jurisdictions.

   In the *Comments on Specific Provisions of The Proposal* section which follows, see our comments related to the need to balance disclosure risks with the need for greater disaggregation of foreign tax information and our proposed solution.

6. ***Enhanced Disclosure Around Deferred Tax Assets and Deferred Tax Liabilities*** – Many companies provide tables showing the components of deferred tax assets and deferred tax liabilities. Investors told us they could benefit from additional disclosure tying/connecting these deferred tax assets and deferred tax liabilities to the balance sheet line items that gave rise to these assets and liabilities. They also said they could benefit from tabular disclosure showing when deferred tax liabilities will become current liabilities, and when deferred tax assets are expected to be applied to

meet future tax payment obligations. Finally, investors said they would benefit from the rollforward of such account balances. We do not see the FASB has made significant enhancements related to this item in the 2023 Proposed Update.

7. ***Greater Transparency Around the Deferred Tax Valuation Allowance*** – Most companies deferred tax assets have many components. For example, in Ford Motor Company's ("Ford's") 2021 Form 10-K (Note 7, Pages 125-128) filed with the US Securities and Exchange Commission, the company reported a $23.3 billion gross deferred tax asset. That gross asset, in turn, had seven components ranging in size from a $1.1 billion deferred tax asset relating to what Ford called "research expenditures" to a $10.4 billion deferred tax asset relating to tax credit carryforwards. Yet despite the diverse underpinnings of its deferred tax asset, Ford provided a single valuation allowance. Our point being that the uneven reporting (i.e., detail around the deferred tax asset but no detail associated with the valuation allowance associated with that asset – makes it virtually impossible for investors to assess the recoverability of different components of the gross deferred tax asset. If companies are breaking out for disclosure purposes the detail of their deferred tax asset, the valuation allowance associated with each component of that asset should also be shown separately. Investors, as we note above, also told us they would benefit from companies' providing a rollforward of the deferred tax asset valuation allowance. We do not see the FASB has made significant enhancements related to this item in the 2023 Proposed Update.

8. ***More Information About Potentially Stranded Foreign Profits & Cash*** – Back in 2016 – before the 2017 Tax Cuts and Jobs Act – investors told us they wanted more information on foreign profits (and the related cash) stranded overseas. The issue had become ever more urgent as more and more companies turned to tax planning (some say avoidance) on a global scale, including positioning critical components of their business in tax-friendly jurisdictions, to minimize their total tax burden. While individuals in the US get taxed on their worldwide income, profits earned by businesses from foreign affiliates – at that time – faced tax only when those profits were repatriated.

   Investors, at that time, wanted companies in which they invested to disclose additional information, if a meaningful amount of foreign earnings were stranded in foreign jurisdictions and would face heavy tax if repatriated. Investors also wanted disclosed the size of the tax bill a company would face if it repatriated all of its foreign earnings and the amount of cash or cash equivalents in foreign jurisdictions related to such foreign earnings, as that cash was stranded and not available for dividends or other capital allocation needs. Investors advised us they would like a rollforward showing the change over time in unrepatriated foreign earnings, and they noted, they would like a breakdown by country of earnings now being held in cash or cash equivalents that have been deemed by the company to be indefinitely invested abroad. We also noted that the change in the deferred tax liability is a component of the tax expense and can potentially have predictive value in respect of future tax payments.

   The 2017 Tax Cuts and Jobs Act, passed by the Trump administration, permitted companies to repatriate foreign profits at lower-than-normal tax rates without actually repatriating the funds (i.e., deemed repatriation). That "tax holiday" "or toll tax", as some commentators have referred to it, was one time. Moreover, the 2017 TCJA permitted companies to pay this one-time toll tax in as many as eight back-ended annual installments, with 60 percent of the total due in years six through eight, meaning many companies have the biggest payments ahead of them in 2023 to 2025. To the extent that companies are still facing substantial cash outflows tied to tax bills they generated from implementing the 2017 TCJA, the details of those expected outflows should also be disclosed, including a schedule on a year-by-year basis of when those payments are due. See our current comments on cash taxes paid in the *Comments on Specific Provisions of The Proposal* section which follows.

   As we note in our discussion of the rate reconciliation in the *Comments on Specific Provisions of The Proposal* section which follows, the 2017 TCJA also shifted the US from a worldwide toward, although not completely toward, a territorial system – what some refer to as a hybrid system. This change is referred to by the FASB in the 2023 Proposed Update as the basis for reducing certain of the disclosures related to undistributed earnings in foreign subsidiaries. As noted in the discussion of undistributed foreign earnings in the *Comments on Specific Provisions of The Proposal* section which follows, it is not clear why only portions of that disclosure are being removed. It is not clear – as we note in the rate reconciliation discussion in the *Comments on Specific Provisions of The Proposal* section which follows – how the FASB reconciles the shift in the US tax system, which they indicate supports eliminating the need for disclosure of undistributed earnings in foreign subsidiaries, with greater focus or emphasis on a rate reconciliation based upon a domiciliary tax rate reconciliation (i.e., in effect a construct of a worldwide taxing system). The utility of a domiciliary rate reconciliation is substantially diminished in a territorial taxing system.

9. ***A Clearer Picture of the Time Frame Within Which Tax Carryforwards Must Be Used*** – While many companies include narrative in their tax footnotes discussing the expected expiration of tax-loss and tax-credit carryforwards, investors told us this information would be more useful if presented in tabular form. Investors indicated a table showing dollar amounts of carryforwards stratified by year of expiration for any remaining period would be a useful

addition – along with a tally of tax carryforwards that had no expiration. We also then highlighted the need to draw a link between tax carryforwards and related valuation allowances and changes as they occurred. We do not see the FASB has made significant enhancements related to this item in the 2023 Proposed Update.

10. ***Unrecognized Tax Benefits*** – In 2016 we noted that we supported the proposal to disclose settlements of unrecognized tax benefits using existing deferred tax assets separate from those that have been or will be settled in cash, as this would provide investors with more information regarding the effect of taxes on an entity's cash flows. We also supported the proposals to disclose unrecognized tax benefits by statement of financial position line item and to require a separate disclosure if the unrecognized tax benefits are not disclosed in the statement of financial position. These disclosures are in line with our overall suggestions on improving disclosures through enhanced presentation principles. We do not see the FASB has made significant enhancements related to this item in the 2023 Proposed Update.

    In 2016 we expressed our disagreement with the FASB's decision to eliminate the requirement to disclose the nature of, and an estimated range for, the amount of unrecognized tax positions for which it is reasonably possible that the total amount will significantly change in the next 12 months. We found the FASB's argument – used to support this removal – that forward-looking information should not be included in financial statements inconsistent with the current reality that financial statements already include an extensive amount of forward-looking information. We noted our belief that eliminating this disclosure would reduce the usefulness of tax disclosures by failing to signal investors as to important information regarding future cash flows. Concerns regarding the limitations of such disclosure, due to an entity's inability to make assessments beyond several months in the future, can be clearly addressed by entities through providing a caveat to that effect. We note the FASB has disregarded our comments on this disclosure item and moved forward with this change in the 2023 Proposed Update. See a discussion of this item under the other changes section within the *Comments on Specific Provisions of The Proposal* section which follows.

11. ***Potential Tax Law Changes*** – We supported the 2016 proposal to require an entity to disclose a description of an enacted tax law change that is probable of effecting the reporting entity as these are routinely a part of tax planning strategies. We were not persuaded by the arguments put forward by the Board against requiring disclosure of effects of changes in tax law on the current reporting period. Changes in tax laws distort the relationship between pretax and net income and investors need to know their effects on reported income. We do not see the FASB has made significant enhancements related to this item in the 2023 Proposed Update.

In our 2016 comment letter to the FASB, we cited the following findings from the Financial Accounting Foundation ("FAF") regarding the usefulness of income tax disclosures:

> *As the Financial Accounting Foundation's Post-Implementation Review on Statement 109 stated: ". . .* ***investors have some difficulty understanding income tax information provided in the financial statements and their level of satisfaction with that information varies****." Moreover, the proposed Concepts Statement indicates that the Board should consider requiring disclosure of the relationship between financial statement line items if the relationship otherwise is not apparent. Presently,* ***the level of aggregation and the inability of investors to link events across statements (balance sheet, income statement, and cash flow statement) limit the ability of disclosures to provide insight into the financial statements****.*

As we consider the list of improvements investors sought in 2016 relative to the amendments in the 2023 Proposed Update and the findings of the FAF relative to the usefulness of income tax disclosures we are not convinced the matters identified in the post-implementation review have been resolved for investors. Specifically, the level of disaggregation and cohesiveness of disclosures – mentioned by the FAF – don't appear markedly improved. For example, cash taxes paid disclosures within the 2023 Proposed Update will be pieces to an incomplete puzzle which are not contextualized by rollforwards.

Developments Since 2016

In the 2016 comment letter, we highlighted the increasing interest investors had in tax disclosures due to the widespread use by companies of aggressive tax strategies that had created operational, reputational, and legal risks because of increased corporate tax investigations and enforcement actions around the globe, as well as increased cooperation among governments to curb multinational tax planning.

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OECD Disclosure Changes & Global Minimum Tax – Cases such as Apple's continue to be disputed in court and others have been brought in the seven years since our last comment letter. Since 2016, we have seen further advancement of the Organization for Economic Cooperation and Development's ("OECD's") tax avoidance efforts including the discussion, and adoption – in certain jurisdictions – of the global minimum tax (i.e., an issue addressed recently by the IASB).

Tax & Civil Society Objectives – During this same time period, we have also seen civil society initiatives to curb tax planning or, as some suggest tax avoidance, including the development of tax disclosures by other stakeholder organizations which seek to ensure corporations – and the investors which own them – pay higher taxes in the name of advancing civil society objectives.

Further, we have seen organizations focused on civil society objectives – in the name of investors needing to understand tax risks – seek to advance their agenda which is at odds with investors interests. In publications[11] such organizations have lauded their efforts to provide investors with greater tax transparency to their detriment.

And, we are currently witnessing a scandal unfold in Australia regarding the sharing of the governments tax plan to increase corporate taxes with those serving corporate clients.

These events have drawn increased scrutiny to tax disclosures since the writing of the 2016 letter and they have changed tax law during this time.

Changes to the US Taxing Regime – Additionally, as we have already touched on above, since our 2016 letter, the 2017 Tax Cuts and Jobs Act provided a reduced tax and toll tax on the repatriation of foreign earnings and moved the US from a worldwide to a more territorial taxing system referred to as a hybrid tax regime.[12]

Considerations Arising from These Developments – Two considerations arise from these events. First, how do standard setters balance the disclosure needs of investors – those who own the corporation and seek to hold management accountable for reasonable, but not aggressive, tax planning and to understand the risks being taken – and the desire of others (not necessarily even stakeholders) to utilize such disclosures to diminish the value of investors investments through the requirement that corporations in which they invest pay more tax.

Second, do the existing provisions of Topic 740 and the enhancements included in this 2023 Proposed Update take account and provide sufficient disclosure in a more territorial taxing system with a global minimum tax. Specifically, investors are paying greater attention to topics such as, for example, the following:

- Tax planning and tax strategy.
- Country-by-country, or jurisdictional, reporting of operating income, income tax expense, effective vs. statutory rate reconciliations by jurisdiction, and cash paid for taxes by jurisdiction.
- Improved disclosures regarding tax uncertainties including the implications of unrecognized tax benefits.

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[11] For example, an academic study of European banks found that, after they were required to publish country-by-country reports from 2014 onwards, the banks exposed to tax havens increased their effective tax rate by 3.7 percentage points relative to the non-exposed banks. Michael Overesch, "Financial Transparency to the Rescue : Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance" (2020).

[12] The Tax Policy Center (Urban Institute and Brookings Institution) publication, *What is the Territorial Tax and Does The United States Have One Now?* provides a relatively straightforward explanation of the shift in the US corporate tax system since 2017.

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- Global minimum tax implication and effects.
- The conversion of the US from a worldwide toward a more territorial tax system "a hybrid tax system" and the implications this has on undistributed foreign profits and the need for related disclosures.

While the FASB notes in Paragraph BC 9 that they believe the level of disaggregation provided in the 2023 Proposed Update is sufficient for investors – but will not increase other stakeholder scrutiny – we evaluate this conclusion as we consider the FASB's proposed changes in this 2023 Proposed Update.

We provide recommendations in the *Comments on Specific Provisions of The Proposal* section which follows as we think a bit more can be done to facilitate investors connecting the dots to contextualize the disclosures. We also consider in that same section our view on whether the FASB has sufficiently incorporated the change in the US taxing system and its implications on the theory and usefulness of the rate reconciliation.

Reductions in Scope of FASB's Proposed Updates from 2016 to 2023

Will Investors Be Satisfied with Reduced Scope? – After seven years and three proposed updates it is difficult to conclude investors – considering the FAF's own post-implementation review findings described above – will be satisfied with the revisions in the 2023 Proposed Update. As the chart in the **Appendix** highlights, each successive proposed update has reduced disclosure enhancements for investors. It seems items such as balance sheet rollforwards of current and deferred tax balances should lack controversy and be achievable as they are part of any effective internal control system.

Our questions for the FASB include: Are the provisions of this 2023 Proposed Update all the reforms investors can expect related to income tax disclosures? When will the other items investors have requested be addressed?

We are concerned that after seven years of this project, three proposals, only minimal changes, and no articulation of the path forward in meeting investor disclosure needs that the impact on investor engagement will be detrimental.

What the Basis of Conclusions Says About the Reduction in Scope – Paragraph BC 3 of the 2023 Proposed Update notes the following with respect to the 2016 and 2019 Proposed Updates:

> *The amendments in both proposed Updates **would have made detailed changes to the disclosure requirements in Topic 740**, in accordance with the concepts in Chapter 8 of Concepts Statement 8. However, **there was a lack of general support for the amendments in those proposed Updates**, and **investors noted that the proposed amendments did not, in their view, provide necessary decision-useful information** for their capital allocation decisions because those proposed amendments did not focus on providing a top-down analysis of an entity's income tax rate and its significant drivers.*

CFA Institute's Previous Commentary on Scope –The following is an excerpt from CFA Institute's 2016 comment letter where we noted support for most of the amendments in the 2016 Proposed Update and that they would be decision-useful:

> *In light of the importance of tax disclosures for investors, and the improvements needed to existing disclosure requirements, **we strongly support most of the proposed enhancements** to the current disclosures – particularly those that have been made regarding increased disaggregation of foreign tax exposures, valuation allowance, carryforwards, indefinitely reinvested foreign earnings, and special government assistance programs that reduce taxes. **We believe the changes proposed in the ED will likely result in more effective, decision-useful information about income taxes**.*

CFA Institute documented in writing that they believed the 2016 proposed changes would be decision-useful to investors. As such, we are challenged to see how the FASB could reach the conclusion in Paragraph BC 3 of the 2023 Proposed Update as excerpted above.

Refocused Scope Due to Investor Response to 2021 Agenda Consultation? – Paragraph BC 5 of the 2023 Proposed Update notes the following with respect to its reduced scope:

> *The Board considered the feedback received on income tax disclosures from the 2021 ITC and* ***determined that the existing income tax disclosure project should be refocused to better align with*** **investor requests for more detailed information** ***that would be used in making capital allocation decisions*** *through improvements to income tax disclosures.* ***On the basis of stakeholder feedback, the Board revised the project*** *objective to improve transparency and decision usefulness through improvements to income tax disclosures primarily related to the rate reconciliation and income taxes paid information.*

We reviewed the comment letters received by the FASB related to the 2021 Agenda Consultation. Most investors were requesting more disaggregation of country-by-country disclosures not a reduction in scope to the rate reconciliation and income taxes paid information. Note CII's[13] observations:

> *CII is aware, consistent with the Board's feedback, that* ***many "investors request more granularity and disaggregation . . . [including a] [b]reakdown of income tax information to better assess global tax risk****." For example, as the Board has heard, many investors agree that jurisdictional or country-by-country information, such as income taxes paid, could assist investors in "****better understand[ing] a company's exposure to potential changes in tax legislation and the global tax risk companies may face*** *. . . ." Such information could assist investors in analyzing a company and making capital allocation decisions. In that regard, we note the following comments of MFS Investment Management, who in a recent letter to the FASB, observed:*
>
>> *As a result of substantial changes at a national and supranational level, as well as greater scrutiny by civil society more broadly, we have spent considerable time researching and evaluating corporate tax practices. Our research has helped us to better model earnings risk and opportunity. It has also allowed us to assess corporate governance more comprehensively, as we believe a company's tax practices—much like its accounting practices—offer an important signal regarding a management team's and board's risk tolerance. Unfortunately, our research in this area is impaired by a lack of transparency regarding corporate tax practices.*

We don't see where investors reduced the scope of their requests for improved tax disclosure down to simply the rate reconciliation and cash taxes paid.[14] Rather we see continued support for more disaggregation in income tax disclosures on a country-by-country basis as noted in Paragraph BC 12(a)[15].

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[13] Council of Institutional Investors comment letter: https://fasb.org/Page/ShowPdf?path=AGENDACONSULT.ITC.017.COUNCIL%20OF%20INSTITUTIONAL%20INVESTORS%20JEFFREY%20P.%20MAHONEY,0.pdf&title=AGENDACONSULT.ITC.017.COUNCIL%20OF%20INSTITUTIONAL%20INVESTORS%20JEFFREY%20P.%20MAHONEY,0

[14] Comment letters of other investors and users:
Alliance of Concerned Investors:
https://fasb.org/Page/ShowPdf?path=AGENDACONSULT.ITC.064.ALLIANCE%20OF%20CONCERNED%20INVESTORS%20SEE%20LISTED,0.pdf&title=AGENDACONSULT.ITC.064.ALLIANCE%20OF%20CONCERNED%20INVESTORS%20SEE%20LISTED,0
S&P Global:
https://fasb.org/Page/ShowPdf?path=AGENDACONSULT.ITC.081.SP%20GLOBAL%20RATINGS%20SHRIPAD%20JOSHI%20LEONARD%20A.%20GRIMANDO,0.pdf&title=AGENDACONSULT.ITC.081.SP%20GLOBAL%20RATINGS%20SHRIPAD%20JOSHI%20LEONARD%20A.%20GRIMANDO,0
Other:
https://fasb.org/Page/ShowPdf?path=AGENDACONSULT.ITC.079.63%20INVESTORS%20SEE%20LISTED,0.pdf&title=AGENDACONSULT.ITC.079.63%20INVESTORS%20SEE%20LISTED,0

[15] We also observe that Paragraph BC 12(a) notes that more detailed jurisdictional disclosures investors are requesting is out of scope for the income tax proposal. We would observe that the FASB simultaneously has a project open on Segment disclosures and these issues could be addressed concurrently in that proposal.

It appears the FASB responded to the feedback of preparers, rather than investors, in their decision to reduce the scope of the 2023 Proposed Update. What we are not clear is how the FASB perceives these proposed changes meet investor needs given there is no investor commentary to that effect as noted in Paragraph BC 12(b). As we highlight elsewhere herein, how the foreign effects disclosures in the rate reconciliation and the cash taxes paid disclosure achieve the desired objective of investors to understand tax risks and opportunities is unclear. The FASB has not undertaken to explain in detail in the Basis for Conclusions how the disclosures specifically satisfy investors stated needs.

Recognizing the Challenges of Country-by-Country Disclosures & Meeting Investor's Objectives – As we note above in the section *Developments Since 2016,* we recognize the trade-off between greater risks of jurisdictional disclosures (See also Paragraphs BC 9 and BC 12(b)). As investors, we own the companies providing the tax disclosures and are the individuals who suffer the risk of loss should additional tax risk be a consequence of such disclosures. That said, we believe – as we highlight in the *Comments on Specific Provisions of The Proposal* section – that more can be done without increasing the risk to investors.

Additionally, we note in our discussion of the rate reconciliation in the *Comments on Specific Provisions of The Proposal* section that we are not convinced that the changes in this 2023 Proposed Update satisfy the objective in Paragraph BC 7 (as well as that noted in Paragraphs BC 13 and BC 15) with respect to providing investors with greater transparency and understanding of tax risks (or opportunities). Further, we note in the discussion of cash taxes paid that information needs greater contextualization to be meaningful to investors.

We also observe that the objective in Paragraph 740-10-50-11A (see Paragraph BC 17) related to the objective of the rate reconciliation disclosures is not articulated as being related to transparency and understanding tax risks (or opportunities) but of understanding the rate reconciliation. These are not equivalent objectives. We believe the FASB has more work to do in the definition and mechanics of the rate reconciliation to demonstrate they create more transparency, decision-usefulness and understanding of tax risks (and opportunities).

Further, we need the FASB to specifically articulate how their proposed disclosures accomplish their stated objective.

Achievable Standard Setting

Our Previous Commentary on Achievable Standard Setting – In our recent comment letter to the FASB on Segment Disclosures we address the emerging narrative of "achievable standard setting" as noted in the box to the right.

> Still further, ***the term or narrative "achievable standard setting" has emerged. It is unclear what this phrase means in application. What makes a standard setting change achievable?*** As it relates to segment disclosures, the modest changes included in this Proposed Update may be achievable but are they an efficient and effective improvement for investors?
>
> While many have complained of the FASB's slow standard-setting process, this has not been the key focus for investors. Investors have highlighted as their concern: a) a delay in addressing investor priorities (i.e., including segments); and b) the FASB's focus on simplification projects to address preparer priorities. ***Investors want the FASB to address key priority topics in a full-throated, comprehensive manner or to outline a plan regarding how they will tackle incremental improvements toward a strategic outcome***.
>
> Without a strategic approach to investor priorities, "achievable standard setting" is likely to be interpreted by investors as doing what is easiest, not what is most effective or needed by investors. For that reason, we believe the FASB needs to clarify the meaning of this term – identifying what makes something achievable from an investor perspective – and explain how investor priorities and improvements will be met. Investors seek more from the FASB than incremental, tactical changes in standards.

Similar Observations Regarding Income Tax Disclosures – We make similar observations with respect to this 2023 Proposed Update on income tax disclosures.

More is needed to meet investors' needs, as the FAF noted in its own post-implementation review.

For investors to have the information they need to make informed inferences about companies' tax positions, they will need far more disclosure than what is set forth in this 2023 Proposed Update and an

understanding from the FASB regarding how the other items they – and the FAF – note are necessary to understand income tax risks. If the FASB is of the view that only highly incremental change is achievable at this point, it should provide a roadmap that sets out future milestones to achieve more comprehensive and more decision-useful tax disclosures in coming amendments.

COMMENTS ON SPECIFIC PROVISIONS OF THE PROPOSAL

In this section we consider specific changes in the 2023 Proposed Update.

RECONCILIATION OF STATUTORY TO EFFECTIVE TAX RATE

The 2023 Proposed Update heavily focuses on changes to the rate reconciliation table which has not been updated since the issuance of Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes* (SFAS 109) in 1992[16] – when global operations were less significant, intangible assets accounted for a much smaller percentage of company market value and when the US tax regime was worldwide. Our perspectives on the changes to the rate reconciliation included in the 2023 Proposed Update are as follows by key aspects of the proposed changes.

Is a Rate Reconciliation from the US Statutory Rate Still Meaningful Given the Move from a Worldwide to a Territorial Tax System?

As we considered the rate reconciliation relative to the removal of disclosures related to deferred tax liabilities associated with cumulative undistributed earnings of subsidiaries in Paragraph 740-30-50-2 of the 2023 Proposed Update – which the FASB notes is due principally to changes in the 2017 Tax Cuts and Jobs Act making the disclosure less meaningful/significant – a higher level or bigger picture question came to mind[17]. Specifically, that question being: Is a rate reconciliation that commences with the domiciliary statutory tax rate in the country of a company's domicile[18] a legacy construct of a worldwide

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[16] We note that the rate reconciliation was last updated with the issuance of Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes (SFAS 109)* and is 30 years old. A description of the rate reconciliation (Paragraph 47) in the Original Pronouncements and Basis of Conclusions (Paragraph 189) is below:

> *47. A public enterprise shall disclose a reconciliation using percentages or dollar amounts of (a) the reported amount of income tax expense attributable to continuing operations for the year to (b) the amount of income tax expense that would result from applying domestic federal statutory tax rates to pretax income from continuing operations. The "statutory" tax rates shall be the regular tax rates if there are alternative tax systems. The estimated amount and the nature of each significant reconciling item shall be disclosed. A nonpublic enterprise shall disclose the nature of significant reconciling items but may omit a numerical reconciliation. If not otherwise evident from the disclosures required by this paragraph and paragraphs 43–46, all enterprises shall disclose the nature and effect of any other significant matters affecting comparability of information for all periods presented.*

> *189. The Board believes that the disclosure requirements of this Statement generally do not create significant new complexities or significant incremental costs. Paragraph 47 generally requires a numerical reconciliation between the reported amount of income tax expense and the amount that would result from applying domestic federal statutory tax rates. A numerical reconciliation was previously required only for public enterprises. The Board decided that nonpublic enterprises should disclose the reasons for significant differences but that a numerical reconciliation should not be required. Similarly, paragraph 43 requires that nonpublic enterprises disclose the types of temporary differences, but not the tax effect of each, that give rise to significant portions of deferred tax liabilities and assets. In addition, the disclosures required when an enterprise's income is taxed directly to owners are applicable only for public enterprises. The Board decided that there should be no other differences between the disclosures required by this Statement for public enterprises and the disclosures required for nonpublic enterprises.*

[17] See further discussion in the *Other Changes: Undistributed Earnings in Foreign Subsidiaries* section which follows where we highlight the FASB's commentary in the Basis for Conclusions of the 2023 and 2019 Proposed Updates regarding their view that changes to the US federal taxing structure under the 2017 TCJA make application of the US federal tax rate to foreign earnings less meaningful.

[18] For US domiciled companies following US GAAP this be a rate reconciliation that begins by assuming all US GAAP profits will be taxed at the US statutory rate of 21%.

tax system? Said differently, does the shift to a territorial tax system – where profits are not taxed upon repatriation to the parent but, rather, at the foreign territorial rate (i.e., possibly subject to a minimum tax) – make a domiciliary rate reconciliation moot, meaningless, or possibly misleading to users of financial statements?

The Tax Policy Center (Urban Institute and Brookings Institution) publication, *What is the Territorial Tax and Does The United States Have One Now?* provides a relatively straightforward explanation of the shift in the US corporate tax system since 2017. It highlights the US has moved away from a worldwide to a more – but not entirely – territorial system. The system is more of a hybrid system because of the application of several minimum tax computations to the rates paid territorially.

This change in taxing theory is being used as the principal argument to remove the aforementioned cumulative undistributed earnings in foreign subsidiaries disclosures in Paragraph 740-30-50-2 of the 2023 Proposed Update. This begs the question: Why then should a rate reconciliation commence with the US statutory tax rate?

If disclosure of undistributed earnings in foreign subsidiaries is rendered less relevant by the 2017 TCJA, this simultaneously makes the domiciliary statutory rate reconciliation less meaningful as the profits to which the statutory rate are being applied will likely never be taxed at that rate.

In essence, the use of the US statutory tax rate of 21% when applied to profits earned in Ireland, for example, which are taxed at 12.5% will create a permanent rate reconciling item difference of 8.5% (21%-8.5%) in the rate reconciliation simply because the rate reconciliation starts with a statutory tax rate percentage of 21% which will not be applied to such earnings. The disclosure of that rate differential in a disaggregated rate reconciliation has no economic meaning and is not reflective of any tax risk – unless and until there is a global minimum tax of say 15% whereby there would only be a rate differential of 2.5% (15% - 12.5%). Our point being – as we illustrate in the disaggregation section which follows – that the FASB's proposed rate reconciliation does not provide meaningful information for investors by starting with the domiciliary rate that the profits will never be subject to.

For US companies with a majority of their revenues (and possibly profits) earned outside of the US, such a reconciliation which starts with the US statutory rate may actually be misleading. In our view, the source of the profits rather than the domicile of the parent should be the driver of the design of any such reconciliation. If not, many of the rate differentials which are portrayed as permanent differences in the rate reconciliation – and which some are saying are indicative of tax risk – are simply differences caused by applying a statutory rate the foreign subsidiary will never pay.

We believe the FASB needs to explain the theory behind a rate reconciliation that presumes all US GAAP profits will be taxed at the domiciliary rate in a post 2017 TCJA era. This type of rate reconciliation likely seems a construct of the prior worldwide taxing perspective which has changed. This is particularly important to be revalidated by the FASB given the principal users of US GAAP are companies domiciled in the US and subject to this revised tax scheme.

From there, the FASB needs to articulate why a rate reconciliation tax rate commencing with a US statutory tax rate provides meaningful and decision-useful information for investors – as it creates reconciling rate differentials that are not reflective of tax risks or opportunities as the US statutory rate will not be paid on the foreign earnings included in US GAAP income before tax.

In the disaggregation section which follows we provide illustrations and discuss how the mechanics of the computation of reconciling items within the rate reconciliation are important to determining what the disclosed amounts represent or mean to investors.

The change in taxing system also makes the question regarding why more geographic disaggregation of profit via segment disclosures and the related income tax expense by geography isn't more decision useful. We address this further in the *Disclosure Regarding Income and Income Taxes by Jurisdiction* section which follows.

The Reconciliation Disclosure Objective vs. The Proposed Update's Objective (Paragraph 740-10-50-11A)

We note the 2023 Proposed Update states on Page 4 that:

> *The proposed amendments* ***would allow investors to better assess, in their capital allocation decisions, how an entity's worldwide operations and related tax risks and tax planning and operational opportunities affect*** *its* ***income tax rate*** *and* ***prospects for future cash flows****.*

The FASB points to the reconciliation as a key means of better meeting these investor risk and capital allocation needs, but the objective of the rate reconciliation disclosure in Paragraph 740-50-10-11A simply states the objective of the disclosures is as follows.

> ***740-10-50-11A*** *The* ***objective of these disclosure requirements is*** *for an entity, particularly an entity operating in multiple jurisdictions,* ***to disclose sufficient information*** *to enable users of financial statements* ***to understand*** *the* ***nature and magnitude of factors*** *contributing to the* ***difference between the effective tax rate and the statutory tax rate****.*

The FASB's statement regarding the objective of the proposed amendments – when contrasted to the objective of the rate reconciliation, the key ingredient of those disclosure amendments, along with cash taxes paid – seem loftier than those of the rate reconciliation. As we have reviewed the proposed amendments in the 2023 Proposed Update and its Basis for Conclusions, we don't find that the FASB has explained precisely how investors have these improved abilities to assess tax risks, opportunities, and planning as well as make better capital allocation decisions based upon the disclosures. The FASB has stated their belief that they will meet this objective, but not how the disclosures proposed achieve that objective. We think the FASB needs to better articulate how the proposed amendments achieve these objectives as it appears investors are left with only pieces of the puzzle.

Amounts and Percentages (Paragraph 740-10-12A)

We support the FASB's plans to express line items in the rate reconciliation table in both amount and percentage terms. Amounts can be more readily tied directly to line items in an entity's financial statements, while percentages help readers of financial statements understand the relative impact of reconciling items on an entity's effective tax rate. In our Ford Motor Company example which follows, we highlight the greater ease of reconciling Ford's prior percentage only reconciliation to the dollar-based tax disclosures provided elsewhere in the table.

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Development of Categories (The 8 New Buckets) (Paragraph 740-10-50-12A(a))

The 2023 Proposed Update would also require that the rate reconciliation classify permanent differences into one of eight categories as follows:

The first four items require no further disaggregation per Paragraph 740-10-50-12A(b).
1. State and local income tax, net of federal (national) income tax effect 2. Enactment of new tax laws 3. Valuation allowances 4. Changes in unrecognized tax benefits
The next three items require further disaggregation by nature per Paragraph 740-10-50-12A(b)(1).
5. Effect of cross-border tax laws 6. Tax credits 7. Nontaxable or nondeductible items
Foreign effects require further disaggregation by nature and jurisdiction per Paragraph 740-10-50-12A(b)(2).
8. Foreign tax effects
Additional items not within the eight categories may be created by operation of Paragraph 740-10-50-12A(b)(3).

Eight Categories Need to Be Defined within the 2023 Proposed Update – Establishing these eight categories could bring greater uniformity – along with the potential for increased consistency over time – to the rate reconciliation table. However, we also know that while promoting uniformity and consistency in the reconciliation tables are worthy goals, neither necessarily translates into greater clarity or decision-usefulness for investors[19]. Indeed, one of our biggest concerns about the 2023 Proposed Update is that it does not define the eight reconciling categories.

The FASB notes that the eight categories are already in widespread use by companies and that preparers have commented that implementing this change would not be burdensome. If this is the case, why aren't they already consistently in use and what does including them within the Codification enhance, especially if they are not defined?

Further, this preparer perspective does not make the categories more understandable to generalist investors, including portfolio managers who are not typically trained in the arcana of tax law. Still further, it is not clear, particularly if already in use, how this categorization necessarily assists investors in the principal objective of determining a forward-looking effective tax rate.

Our view is that line items within the reconciliation table be accompanied by a full explanation understandable to investors – not simply tax specialists. We believe the items to be included within the eight categories need to be more specifically articulated in the 2023 Proposed Update to ensure that preparers are consistently applying the definition and so that investors can look to the Codification for an explanation of these categories' contents. See also the Ford Motor Company example which follows that attempts to categorize their existing reconciling items into these eight categories.

We note that several paragraphs which follow the discussion of the further disaggregation criteria in Paragraph 740-10-50-12(A)(b) provide some further insight into the eight categories and we have the following comments in that regard:

[19] We note the discussion in Paragraphs BC 13 and BC 15 of the Basis for Conclusions of the 2023 Proposed Update the emphasis on comparability, consistency, and transparency but not necessarily on decision-usefulness of the categorization to investors.

- *State & Local Taxes and Foreign Effects Category (Paragraph 740-10-50-12(A)(c)* – We note the language in Paragraph 740-10-50-12A(c) which describes the contents of the state and local income tax and foreign effects categories. We believe this language should proceed the disaggregation criteria in Paragraph 740-10-50-12A(b) as it is essential to understand the location of items within the eight categories before applying the disaggregation criteria. This would be helpful and more obvious in understanding that the items within the other six categories are domestic only items.

- *State & Local Taxes (Paragraph 740-10-50-12)* – Further, we believe the required qualitative description of state and local taxes as required by Paragraph 740-10-50-12B should also be moved up prior to the discussion of the disaggregation criteria in Paragraph 740-10-50-12A(b).

  We also believe that state and local tax explanations should be quantitative rather than qualitative.

- *Effects of Cross Border Activities (Paragraph BC 18)* – We also note the discussion related to what should be included within cross border activities within Paragraph BC 18 of the Basis of Conclusions of the 2023 Proposed Update. We believe this information should be included within the provisions of Topic 740 not the Basis for Conclusions of the 2023 Proposed Update as this is definitional in nature and would ensure greater understanding of the items within that category.

- *Illustrative Guidance (Paragraph 740-10-55-231)* – We do not believe the illustration in Paragraph 740-10-55-231 on Page 18 of the 2023 Proposed Update, which investors are being pointed to, is sufficient as this is simply illustrative guidance, and it too does not include definitions of these captions. See our other questions and comments regarding the illustration in the disaggregation section which follows.

It is our view that companies will likely have different items included within the captions without their being definitions within the Codification regarding what these captions mean and are to include.

Further, the inclusion of reconciling items within those eight categories determines the application of what the FASB believes are further disaggregation principles in Paragraph 740-10-50-12A(b)(1) & (2). Our overall point being the definitions of the eight categories are more important because of the succeeding disaggregation threshold application.

Additionally, we believe reordering of the paragraphs related to the eight categories – Paragraphs 740-10-50-12A(a), 740-10-50-12A(b)(3), 740-10-50-12A(c) and 740-10-50-12B – is needed such that preparers and investors clearly understand the composition and contents of the eight categories before the guidance on further disaggregation within categories is provided.

The Ford Motor company example which follows, highlights the challenge in categorizing the prior disclosures into the eight categories indicating that they may not be as generally accepted as the FASB may believe.

Description of Reconciling Items Within the Eight Categories – We address the description of items within the eight categories in the section which follows entitled*: Explanation of Reconciling Items: More Detailed Description of Items Within Eight Categories & Their Persistency is Required (Paragraph 740-10-50-12C)*

Does the Categorization Make the Rate Reconciliation More Useful to Investors?: A Case Study – More broadly, it is not evident to us how the new classification of reconciling items within the eight

categories – particularly without greater description – will help investors achieve one of their primary objectives in tax analysis, namely, to forecast an entity's future effective tax rate. Placing permanent differences into the eight categories would seem to be a good start, but more is needed if investors are to start using this new information. Investors need to know why the reconciling items exist and if they are likely to continue – and to what degree.[20]

In this regard, it's worth thinking about the work others have done in trying to understand companies' tax picture using existing disclosure. One such person, Shiva Rajgopal, the Kester and Byrnes Professor of accounting at Columbia Business School – and a member of the CDPC – recently worked with the tax footnote of the Ford Motor Company to understand the current tax picture and tax outlook of the auto maker.

Professor Rajgopal's key finding in the blogs on Forbes.com (*Why Investors Need Better Corporate Tax Disclosures Part 1 and Part 2*) is that not only is Ford's tax footnote challenging to understand – with several of the line items in Ford's footnote understandable to only tax specialists – but it seems extremely challenging (if not impossible?) from Ford's disclosure to forecast the company's tax rate.

Using an extract from Ford's 2021 Form 10-K (Note 7, Pages 125-128) we recast, in the table which follows, the rate reconciliation using the eight categories suggested in the 2023 Proposed Update.

As part of this exercise, we also translated Ford's reconciliation in percentage terms to dollars and percentages and found – as we note above – this to make it more understandable.

In notes to the table which follows, we highlight the challenges we experienced in conforming the existing line items within Ford's rate reconciliation to the eight categories within the 2023 Proposed Update.

We found several significant items which would not seem to be captured within such categories. To our mind this highlights our earlier point with respect to needing definitions of the eight categories as they may not be as generally understood or as widely in use as the FASB perceives. Further, it is not clear – as the Ford recategorization highlights – that the creation of these eight categories helps investors understand their contents or in evaluating the persistency of the reconciling items.

As we consider the Ford example relative to the 2023 Proposed Update, we recognize that more detail may be provided by Ford through the disaggregation of items – as addressed in the next section – which are greater than 5% of statutory tax expense. We are most interested to see further disaggregation of the "tax credits" caption given its significant impact on the effective rate. However, we also believe that even further disaggregation of these items will highlight the point we make in the following section regarding needing an individual description of reconciling items such that the persistency of such items may be assessed and made more meaningful and useful to investors. We also note there are several significant reconciling items within the existing Ford rate reconciliation table entitled "enacted changes in tax law", "valuation allowances" and "other" line items" that are more than 5% of income tax expense – but they are not required to be further disaggregated under the 2023 Proposed Update.

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[20] *The Purpose of a Rate Reconciliation*: While some have indicated that the changes to the rate reconciliation are meant to better portray tax risk, we are not convinced as we address above. Further, a rate reconciliation is only a current period measure and not a cumulative measure – if it did convey tax risk. This is more fully analyzed in the coming sections.

Needless to say, investors want a rate reconciliation which helps them assess the persistency of that effective rate into the future and they want, as we said in our 2016 comment letter, income tax disclosures which help them to connect income tax expense to cash flows related to income taxes.

FORD MOTOR COMPANY AND SUBSIDIARIES NOTES TO THE FINANCIAL STATEMENTS			
COMPONENTS OF INCOME TAXES			
Components of income taxes excluding cumulative effects of changes in accounting principles, other comprehensive income, and equity in net results of affiliated companies accounted for after-tax for the years ended December 31 were as follows:			
	2019	**2020**	**2021**
Income/(Loss) before income taxes (in millions)			
U.S.	2,656.0	(231.0)	10,043.0
Non-U.S.	(3,296.0)	(885.0)	7,737.0
Total	(640.0)	(1,116.0)	17,780.0
Provision for/(Benefit from) income taxes (in millions)			
Current			
Federal	(101.0)	(23.0)	102.0
Non-U.S.	738.0	554.0	598.0
State and local	33.0	(45.0)	26.0
Total current	670.0	486.0	726.0
Deferred			
Federal	(1,190.0)	(523.0)	2,290.0
Non-U.S.	(70.0)	168.0	(3,254.0)
State and local	(134.0)	29.0	108.0
Total deferred	(1,394.0)	(326.0)	(856.0)
Total	(724.0)	160.0	(130.0)
Reconciliation of effective tax rate			
U.S. statutory rate	21.0%	21.0%	21.0%
Non-U.S. tax rates under U.S. rates	46.9	(2.6)	1.3
State and local income taxes	12.4	8.9	0.5
General business credits	67.0	35.1	(2.3)
Dispositions and restructurings [a]	45.5	(0.4)	(18.8)
U.S. tax on non-U.S. earnings	(49.2)	27.0	2.4
Prior year settlements and claims	(5.0)	8.3	(0.3)
Tax incentives	20.7	(6.0)	(0.6)
Enacted change in tax laws	(12.5)	1.5	1.1
Valuation allowances	(18.7)	(108.8)	(4.7)
Other	(15.0)	1.7	(0.3)
Effective rate	113.1%	(14.3)%	(0.7)%

(a) Includes a benefit of $2.9 billion to recognize deferred tax assets resulting from changes in our global tax structure in 2021.

RATE RECONCILIATION RECLASSIFIED UNDER EIGHT CATEGORIES IN PROPOSED UPDATE:

	2019		2020		2021	
U.S. Statutory Rate	$ (134.4)	21.0%	$ (234.4)	21.0%	$ 3,733.8	21.0%
1 State and local income taxes	$ (79.4)	12.4	$ (99.3)	8.9	$ 88.9	0.5
2 Foreign Tax Effects:						
U.S. tax on non-U.S. earnings	$ 314.9	(49.2)	$ (301.3)	27.0	$ 426.7	2.4
Non-U.S. tax rates under U.S. rates	$ (300.2)	46.9	$ 29.0	(2.6)	$ 231.1	1.3
3 Enacted Change in Tax Laws	$ 80.0	(12.5)	$ (16.7)	1.5	$ 195.6	1.1
4 Effect of Cross-Border Tax Laws		-		-		-
5 Tax Credits		-		-		-
General business credits	$ (428.8)	67.0	$ (391.7)	35.1	$ (408.9)	(2.3)
Tax incentives	$ (132.5)	20.7	$ 67.0	(6.0)	$ (106.7)	(0.6)
6 Valuation allowances	$ 119.7	(18.7)	$ 1,214.2	(108.8)	$ (835.7)	(4.7)
7 Nontaxable or Nondeductible Items		-		-		-
8 Changes in Unrecognized Tax Benefits		-		-		-
Items Outside the 8 Defined Categories						
Dispositions and restructurings [a]	$ (291.2)	45.5	$ 4.5	(0.4)	$ (3,342.6)	(18.8)
Prior year settlements and claims	$ 32.0	(5.0)	$ (92.6)	8.3	$ (53.3)	(0.3)
Other	$ 96.0	(15.0)	$ (19.0)	1.7	$ (53.3)	(0.3)
Effective rate	(723.9)	113.1%	159.6	(14.3%)	(124.5)	(0.7%)
			Rounding difference		(5.5)	
					(130.0)	0.73%

Items exceeding 5% percent of tax expense (1% of income before tax)	blue lettering
Items requiring disaggregation under 2023 Proposed Update	green shading

Note 1: Items with blue lettering exceed five percent of tax expense (1% of operating income) but only those in green shaded categories require greater disaggregation under 2023 Proposed Update.

Note 2: Items requiring disaggregation under the 2023 Proposed Update include foreign tax effects, effect of cross-border tax laws, tax credits and non-taxable, non-deductible items.

Note 3: We have made our best guesstimate of the location of the existing items within Ford's rate reconciliation to the eight categories within the 2023 Proposed Update. The US tax on non-US earnings and the Non-US tax rates under US tax rates likely include what may be categorized at cross border as well as foreign tax effects. This classification challenge highlights the need for greater definition of the eight categories and the use of other captions within current practice. There were several items outside the existing eight categories in the 2023 Proposed Update which we have highlighted at the bottom. Some may belong within non-taxable or non-deductible items but this is not clear from the descriptors in Ford's footnote and without definition of what is to be included in the non-taxable or non-deductible items category within the 2023 Proposed Update there may not be consistency in classification.

5% Disclosure Disaggregation Threshold (Disaggregation Within Key, But Not, All Categories) (Paragraph 740-10-50-12A(b))

Clarity on Articulation of the 5% Threshold's Computation – The FASB notes the 5% disaggregation threshold it is incorporating in the 2023 Proposed Update is a carryover from an existing SEC rule – SEC Regulation S-K Rule 4.08(h) (17 FR 210.4 08(h) – which we excerpt in the box to the right.

That 5% threshold is defined in the 2023 Proposed Update Paragraph 740-10-50-12A(b) in the box below.

b. Separate disclosure shall be required for any reconciling item listed below in which the effect of the reconciling item is equal to or greater than 5 percent of the amount computed by multiplying the income (or loss) from continuing operations before tax by the applicable statutory federal (national) income tax rate of the jurisdiction of domicile. When disaggregating the following reconciling items by nature, an entity should consider the reconciling item's fundamental or essential characteristics, such as the event that caused the reconciling item and the activity with which the reconciling item is associated.

1. If the reconciling item is within the effect of cross-border tax laws, tax credits, and nontaxable or nondeductible items categories, it shall be disaggregated by nature.
2. If the reconciling item is within the foreign tax effects category, it shall be disaggregated by jurisdiction (country) and by nature. If a foreign jurisdiction meets the 5 percent threshold, it shall be separately disclosed as a reconciling item. Within any foreign jurisdiction (regardless of whether it meets the 5 percent threshold), the reconciling item shall be separately disclosed by nature if its gross amount (positive or negative) meets the 5 percent threshold.
3. If the reconciling item is not within any of the categories listed in (a), it shall be disaggregated by nature.

Upon first reading we found the description in Paragraph 740-10-50-12A (b) cumbersome to understand.

We find the description provided in Rule 4-08 is a bit clearer because it defines the "computed amount" as…. "the amount arrived at by multiplying the income(loss) before tax by the applicable statutory Federal income tax rate" …. before introducing the application of the 5% to the "computed amount".

(h) *Income tax expense.*

(1) Disclosure shall be made in the statement of comprehensive income or a note thereto, of the components of income (loss) before income tax expense (benefit) as either domestic or foreign.

(i) the components of income (loss) before income tax expense (benefit) as either domestic or foreign;

(ii) the components of income tax expense, including

(A) taxes currently payable and

(B) the net tax effects, as applicable, of timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences, such as depreciation, warranty costs, etc., where the amount of each such tax effect exceeds five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate; other differences may be combined.)

Note 1 to paragraph (h)(1): Amounts applicable to United States Federal income taxes, to foreign income taxes and the other income taxes shall be stated separately for each major component. Amounts applicable to foreign income (loss) and amounts applicable to foreign or other income taxes which are less than five percent of the total of income before taxes or the component of tax expense, respectively, need not be separately disclosed. For purposes of this rule, foreign income (loss) is defined as income (loss) generated from a registrant's foreign operations, *i.e.*, operations that are *located outside* of the registrant's home country.

(2) In the reconciliation between the amount of reported total income tax expense (benefit) and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate, if no individual reconciling item amounts to more than five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than five percent of such computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than five percent of the computed amount may be aggregated in the reconciliation. Where the reporting person is a foreign entity, the income tax rate in that person's country of domicile should normally be used in making the above computation, but different rates should not be used for subsidiaries or other segments of a reporting entity. When the rate used by a reporting person is other than the United States Federal corporate income tax rate, the rate used and the basis for using such rate shall be disclosed.

We think the language here and in 740-10-50-12A(b)(2) related to foreign effects– as we discuss more above and below – are challenging to understand.

An example may best illustrate this point better than words could ever achieve. We recommend the FASB make this crystal clear – as this amount is the threshold to be applied when considering the reconciling items for disclosure.

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Is the 5% Disaggregation Threshold Applicable in Determining the Eight, or More, Categories? – As we understand the language in Paragraph 740-10-50-12A(a) of the 2023 Proposed Update, these eight categories are required to be disclosed whether or not (irrespective of) the 5% disaggregation threshold in Paragraph 740-10-50-12A(b) which we replicate again here (see box to right) for ease of reference.

b. Separate disclosure shall be required for any reconciling item listed below in which the effect of the reconciling item is equal to or greater than 5 percent of the amount computed by multiplying the income (or loss) from continuing operations before tax by the applicable statutory federal (national) income tax rate of the jurisdiction of domicile. When disaggregating the following reconciling items by nature, an entity should consider the reconciling item's fundamental or essential characteristics, such as the event that caused the reconciling item and the activity with which the reconciling item is associated.

1. If the reconciling item is within the effect of cross-border tax laws, tax credits, and nontaxable or nondeductible items categories, it shall be disaggregated by nature.
2. If the reconciling item is within the foreign tax effects category, it shall be disaggregated by jurisdiction (country) and by nature. If a foreign jurisdiction meets the 5 percent threshold, it shall be separately disclosed as a reconciling item. Within any foreign jurisdiction (regardless of whether it meets the 5 percent threshold), the reconciling item shall be separately disclosed by nature if its gross amount (positive or negative) meets the 5 percent threshold.
3. If the reconciling item is not within any of the categories listed in (a), it shall be disaggregated by nature.

We believe this requirement (i.e., that categorization regardless of meeting the 5% threshold) needs to be more explicitly stated because Paragraph 740-10-50-12A(b) of the 2023 Proposed Update – which seemingly addresses the disaggregation criteria within the eight categories – implies via Paragraph 740-10-50-12A(b)(3) that additional categories – other than these eight – may be created when applying the 5% disaggregation threshold.

If this is the appropriate interpretation, companies may need (or choose?) to develop additional categories.

Against that backdrop, we can't help wondering if the language of the 2023 Proposed Update will thwart the FASB's effort to bring uniformity and consistency to the reconciliation table.

We also note that Paragraph BC 15 states that Paragraph 105-10-05-06 (i.e., The provisions of the Codification need not be applied to immaterial items.) is applicable.

Are investors to assume items are material and required in the eight categories above only if they meet the 5% threshold in Paragraph 740-10-50-12A(b)? Said differently, is 5% the default disclosure threshold for the eight categories? Or are they to be disclosed irrespective of meeting the disaggregation threshold? Or is there another management-based materiality threshold to be applied to the inclusion of the eight categories?

The inclusion of reconciling items within the eight categories determines the application of what the FASB believes are further disaggregation principles in Paragraph 740-10-50-12A(b)(1) & (2). The definitions of the eight categories we highlight above is made even more important because of the succeeding threshold application as we address next.

Categories Requiring No Further Disaggregation of Reconciling Items
Four of the eight categories:

- state and local income tax, net of federal (national) income tax effect;
- enactment of new tax laws;
- valuation allowances; and
- changes in unrecognized tax benefits;

have no definition and require no further disaggregation.

As we described above, we note state and local income taxes are only required to be qualitatively discussed per Paragraph 740-10-50-12B. We believe more quantitative disclosure is necessary.

As we highlight in the *Overarching Considerations* section in our 2016 comment letter, we indicated investors wanted more detail on the changes in valuation allowances and the financial statement captions to which they relate, and they wanted to know more about the sources of changes in unrecognized tax benefits. These, particularly the unrecognized tax benefits, provide great insight into tax risks and the quality and riskiness of management's tax positions. Impacts of the changes in new tax laws is also important to understanding and connecting the impact on tax expense with the cash paid for taxes.

Without more specific definitions of these four of the eight categories or further disaggregation requirements, it doesn't appear that any changes in disclosure will result from the incorporation of the existing SEC rule into the Codification. Further, the FASB misses the opportunity to facilitate greater understanding of the items which may most likely impact the predictability of the effective tax rate and enable investors to make an assessment of tax risk.

Categories Requiring Further Disaggregation of Reconciling Items by Nature
Three of the eight categories:

- cross-border tax laws;
- tax credits; and
- non-taxable or non-deductible items;

have no definition and require further disaggregation per Paragraph 740-10-50-12A (b)(1).

Without greater articulation of what is meant "by nature" within cross-border tax laws, tax credits and non-taxable or non-deductible items it is not clear that preparers will create further disaggregation when applying Paragraph 740-10-50-12A (b)(1) than they have under the SEC rule.

For example, what does by nature mean as it relates to cross-border tax laws? Is it the type of law? As we note above, the discussion of cross-border tax laws in Paragraph BC 16 of the 2023 Proposed Update needs to be moved into the text of Topic 740.

As it relates to tax credits is by nature the type of tax credit or by jurisdiction?

How do investors know there will be any further breakdown if the preparers believe the current category is a sufficient description of the nature under the SEC rule? The illustration in Paragraph 740-10-55-231 is illustrative not prescriptive, as such preparers could view the category as sufficiently descriptive. Said differently, was the nature of the item (i.e., its essential characteristic or the activity which created it) not considered previously under the SEC guidance? One has to believe the nature of the item was not previously considered – or existed beyond the definition of the category – to believe greater disaggregation will result from this element of the 2023 Proposed Update. We believe there needs to be definition of the eight categories and further guidance outside of an illustrative example of what is meant by nature.

Foreign Effects Category Requiring Further Disaggregation by Jurisdiction and By Nature
Clarity Needed on How Disaggregation is To Be Determined – As it relates to Paragraph 740-10-50-12A(b)(2), this would appear to be the most descriptive new requirement because it indicates that by nature and by country disclosure (a newly defined characteristic of a reconciling item) is necessary.

The provisions of Paragraph 740-10-50-12A(b)(2) related to foreign tax effects is unclear and needs refinement in its articulation. We excerpt it in the box here for ease of reference.

> b. Separate disclosure shall be required for any reconciling item listed below in which the effect of the reconciling item is equal to or greater than 5 percent of the amount computed by multiplying the income (or loss) from continuing operations before tax by the applicable statutory federal (national) income tax rate of the jurisdiction of domicile. When disaggregating the following reconciling items by nature, an entity should consider the reconciling item's fundamental or essential characteristics, such as the event that caused the reconciling item and the activity with which the reconciling item is associated.
> 1. If the reconciling item is within the effect of cross-border tax laws, tax credits, and nontaxable or nondeductible items categories, it shall be disaggregated by nature.
> 2. If the reconciling item is within the foreign tax effects category, it shall be disaggregated by jurisdiction (country) and by nature. If a foreign jurisdiction meets the 5 percent threshold, it shall be separately disclosed as a reconciling item. Within any foreign jurisdiction (regardless of whether it meets the 5 percent threshold), the reconciling item shall be separately disclosed by nature if its gross amount (positive or negative) meets the 5 percent threshold.
> 3. If the reconciling item is not within any of the categories listed in (a), it shall be disaggregated by nature.

It is not clear whether the determining factor for a foreign jurisdiction meeting the threshold for disclosure is:

i. the nature of the reconciling items within the foreign jurisdiction;
ii. all of the reconciling items within the foreign jurisdiction; or
iii. the total foreign tax expense in the jurisdiction (i.e., which is not a reconciling item per se).

The ordering and contents of the sentences in Paragraph 740-10-50-12A(b)(2) is confusing and unclear.

The first sentence in Paragraph 740-10-50-12A(b)(2) implies that the first step in considering the disclosure is to look through the jurisdiction to the reconciling item for consideration and then if it meets the 5% threshold it is to be disclosed by nature and jurisdiction.

The second sentence of Paragraph 740-10-50-12A(b)(2) implies any foreign jurisdiction meeting the 5% threshold is to be disclosed as a reconciling item – thereby implying the jurisdiction is the reconciling item, not the reconciling item within the foreign jurisdiction. But what factor within a foreign jurisdiction is the 5% applied to? The reconciling items? The total foreign tax expense? The rate differential created by the reconciliation? Said differently, is it the local country rate reconciliation items, the reconciling items produced by the application of the domiciliary statutory rate, or the total foreign income tax expense (i.e., which is not a reconciling item)?

The third sentence seems to revert back to the reconciling items within the foreign jurisdiction – noting they are to be evaluated gross (positive or negative). The language in parentheses in the third sentence – indicating that within a foreign jurisdiction (regardless of whether the jurisdiction meets the 5% threshold) the reconciling items are evaluated gross – seems to be inconsistent with the second sentence.

We also note the language in the lead-in to Paragraph 740-10-55-231 – specifically Paragraph 740-10-55-231 (a), (b) and (c) which discusses Ireland, the United Kingdom and Switzerland and Mexico. It is not clear what is meant by the 5% threshold at the "jurisdiction level" in that illustration. Is this the total income tax expense in the foreign jurisdiction? This is implied but not stated and is confusing given total foreign income tax is not a rate reconciling item per se. This implies a different 5% threshold which needs to be articulated separately? Does it mean the reconciling items within the jurisdiction – and at what rate is that reconciling item computed (i.e., at the domiciliary or foreign tax rate)?

Further adding to the confusion is that reconciling items (i.e., rate differentials) are created by the mere mechanical operation of the rate reconciliation (i.e., starting with the US statutory rate), which we discuss in more detail in the section which follows. Are those rate differentials – which are not necessarily indicative of tax risk or permanent items in the foreign jurisdictions own home country book to tax reconciliation – reconciling items which must be considered when determining if the 5% disaggregation threshold has been met? It appears that the FASB is communicating that these rate differentials are helpful in understanding tax risks when in fact they are simply mechanical derivations from the rate reconciliation as we discuss below.

In addition to the questions regarding the language in Paragraph 740-10-50-12A(b)(2), we also highlight important mechanical considerations which impact the computation of items within the foreign effects category as describe in the following section.

How is the Rate Differential Defined and Determined?:
Reconciling Items Created Simply by Mechanical Operation of the Reconciliation – We think it is important to recognize that reconciling items will be created simply by the operation of the rate reconciliation. See our earlier discussion in the section *Is a Rate Reconciliation from the US Statutory Rate Still Meaningful Given the Move from a Worldwide to a Territorial Tax System?*

The rate reconciliation commences with the domiciliary statutory rate – for example, the US statutory tax rate of 21% – being applied to worldwide pre-tax income. As such, reconciling items for a foreign jurisdiction may be created simply by the fact that applying the US statutory tax rate to the foreign profits which are not taxed territorially at the US 21% statutory rate. The US statutory rate may be a higher or lower rate than the statutory rate in that foreign jurisdiction. This results in what appears to be a permanent – or tax risk – item in the rate reconciliation. It is not a tax risk item in a territorial system.

Illustrative Example:
Below we highlight an example where Country A has no reconciling items at a jurisdiction level and has a statutory tax rate of 10% in its jurisdiction. Application of the US statutory rate of 21% creates an 11% ($110) reconciling item that appears as a permanent difference in a consolidated rate reconciliation of a US domiciliary company. There is not necessarily a tax risk here. Without a definition of what the rate differential represents investors will not know that this item is simply a mechanical difference created by applying the US statutory tax rate which is likely never applicable to the jurisdiction’s profits.

Also, in the example below, we highlight Country B in which the statutory tax rate is 40% but management has negotiated a favorable tax treaty with the government of Country B to bring it down to 21% – coincidentally the statutory US rate. While this item will show up in a country specific rate reconciliation, it will not show up in the US domiciliary parents rate reconciliation because 21% is applied as the starting point.

The example highlights that only Country A will have a reconciling item because the income from Country B applied to the US statutory rate results in no rate differential – and likely no need to disaggregate the jurisdiction in the rate reconciliation disclosure.

INDIVIDUAL

COUNTRY A					
GAAP Income & Tax	$	1,000.00	$	100.00	10.0%
	$	-	$	-	0.0%
Tax Income & Tax	$	1,000.00	$	100.00	10.0%

COUNTRY B					
GAAP Income & Tax	$	1,000.00	$	400.00	40.0%
Tax Rate Deal (Reduce Rate to 21% from 40%)	$	-	$	(190.00)	0.0%
Tax Income & Tax	$	1,000.00	$	210.00	21.0%

Assumptions:
Country A has a statutory tax rate of 10%. Country B has a statutory tax rate of 40%,
but company has negotiated a 21% tax rate in jurisdiction.
The parent company is a U.S. domiciled company and the U.S. statutory rate is 21%.

CONSOLIDATED

COUNTRY A					
GAAP Income & Tax	$	1,000.00	$	210.00	21.0%
	$	-	$	-	0.0%
US Rate Differential	$	-	$	(110.00)	-11.0%
Tax Income & Tax	$	1,000.00	$	100.00	10.0%

COUNTRY B					
GAAP Income & Tax	$	1,000.00	$	210.00	21.0%
Tax Rate Deal (Reduce Rate to 21% from 40%)	$	-	$	-	0.0%
US Rate Differential	$	-	$	-	0.0%
Tax Income & Tax	$	1,000.00	$	210.00	21.0%

TOTAL					
GAAP Income & Tax	$	2,000.00	$	420.00	21.0%
Tax Rate Deal (Reduce Rate to 21% from 40%)	$	-	$	-	0.0%
US Rate Differential	$	-	$	(110.00)	-5.5%
Tax Income & Tax	$	2,000.00	$	310.00	15.5%

Our point is twofold:

1) It is essential to remember that disclosure is not based upon whether the foreign tax in a jurisdiction is more than 5% of total tax, but more dependent upon whether the rate in the jurisdiction is close to the domiciliary (i.e., US tax rate in this case), and
2) This rate differential may or may not be indicative of tax risk.

The challenge with the 2023 Proposed Update and the illustration at Paragraph 740-10-55-231 is that how the rate differential is defined and derived is not specified in the 2023 Proposed Update.

As such, what, if anything, the rate differential communicates to investors is not clear.

The FASB needs to provide investors with more than simply the illustration of the tax rate differential line item presented in Paragraph 740-10-55-231.

The FASB needs to clarify whether the rate differential they are suggesting will be disclosed, represents the difference between the US statutory rate of 21% and the statutory rate in the jurisdiction – and whether this is in fact a tax risk, permanent item, or simple mechanical computational difference.

We would prefer the rate differential be defined as the difference between the US statutory and the foreign statutory rate such that investors are able – should they know this from it being defined – to gross up the difference to arrive at the book taxable income in that jurisdiction[21]. This would also highlight in the case of Country B above that they are paying substantially below the statutory rate in the foreign jurisdiction.

Further, this requires defining at what rate other reconciling items in a foreign jurisdiction are to be presented in the domiciliary country rate reconciliation – as we describe in the next section.

[21] For example, if the rate differential disclosed in the reconciliation is the difference between the US statutory rate and the foreign statutory rate – whereby they can gross this amount up (i.e., knowing the US rate is 21% and the Irish rate is 12.5% for a difference of 8.5%) by dividing it by the difference.

At What Rate Are the Foreign Permanent Differences Computed for Presentation? – Also important to the rate differential definition and computation above is the rate at which other permanent differences (reconciling items) are computed and presented within the rate reconciliation. This needs to be defined by the FASB as the quantum of the rate differential above – and what it means – depends upon this computation.

Are the reconciling items computed at the US statutory tax rate (i.e., 21%) or the foreign statutory rate (i.e., 10% for Country A and 40% for Country B in our illustration)? The 2023 Proposed Update does not specify. Our preference would be at the foreign statutory rate such that the items disclosed are, or could be, used to create a foreign statutory to effective rate reconciliation in each jurisdiction.

Illustrative Example:
Below we expand our illustration above to include permanent items in both Country A and Country B and we highlight two possible scenarios (i.e., there could be more) for the presentation of the rate reconciliation based upon the rate at which the permanent items are calculated.

As you will note in the description of Presentation #1 and #2 below, not only is it important for FASB to define how the rate differential is computed, but the rate (US or foreign statutory rate) at which the non-deductible item is computed.

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INDIVIDUAL

COUNTRY A

	Income	Tax	Rate
GAAP Income & Tax	$ 1,000.00	$ 100.00	10.0%
	$ -	$ -	0.0%
Tax Income & Tax	$ 1,000.00	$ 100.00	10.0%

COUNTRY B

	Income	Tax	Rate
GAAP Income & Tax	$ 1,000.00	$ 400.00	40.0%
Tax Rate Deal (Reduce Rate to 21% from 40%)	$ -	$ (190.00)	0.0%
Tax Income & Tax	$ 1,000.00	$ 210.00	21.0%

Assumptions:

Country A has a statutory tax rate of 10%. Country B has a statutory tax rate of 40%, but company has negotiated a 21% tax rate in jurisdiction.

The parent company is a U.S. domiciled company and the U.S. statutory rate is 21%.

CONSOLIDATED

COUNTRY A

	Income	Tax	Rate
GAAP Income & Tax	$ 1,000.00	$ 210.00	21.0%
	$ -	$ -	0.0%
US Rate Differential	$ -	$ (110.00)	-11.0%
Tax Income & Tax	$ 1,000.00	$ 100.00	10.0%

COUNTRY B

	Income	Tax	Rate
GAAP Income & Tax	$ 1,000.00	$ 210.00	21.0%
Tax Rate Deal (Reduce Rate to 21% from 40%)	$ -	$ -	0.0%
US Rate Differential	$ -	$ -	0.0%
Tax Income & Tax	$ 1,000.00	$ 210.00	21.0%

TOTAL

	Income	Tax	Rate
GAAP Income & Tax	$ 2,000.00	$ 420.00	21.0%
Tax Rate Deal (Reduce Rate to 21% from 40%)	$ -	$ -	0.0%
US Rate Differential	$ -	$ (110.00)	-5.5%
Tax Income & Tax	$ 2,000.00	$ 310.00	15.5%

INDIVIDUAL

COUNTRY A

	Income	Tax	Rate
GAAP Income & Tax	**$ 1,000.00**	**$ 100.00**	**10.0%**
	$ -	$ -	0.0%
Non Deductible Item	$ 900.00	$ 90.00	9.0%
	$ -	$ -	0.0%
Tax Income & Tax	$ 1,900.00	$ 190.00	19.0%
Statutory Rate (GAAP Effective Tax Rate is Shown Above)			10.0%

COUNTRY B

	Income	Tax	Rate
GAAP Income & Tax	**$ 1,000.00**	**$ 400.00**	**40.0%**
Tax Rate Deal (Reduce Rate to 21% from 40%)	$ -	$ (190.00)	-19.0%
Non Deductible Item	$ 600.00	$ 240.00	24.0%
Tax Rate Deal on NonDeductible Item	$ -	$ (114.00)	-11.4%
Tax Income & Tax	$ 1,600.00	$ 336.00	33.6%
Negotiated Statutory Rate (GAAP Effective Tax Rate is Shown Above)			21.0%

Assumptions:

Same as above.

Each country now also has a non-deductible item.

CONSOLIDATED

COUNTRY A

	Income	Tax	Rate
GAAP Income & Tax	$ 1,000.00	$ 210.00	21.0%
	$ -	$ -	0.0%
Non Deductible Item	$ 900.00	$ 90.00	9.0%
	$ -	$ -	0.0%
US Rate Differential	$ -	$ (110.00)	-11.0%
	$ -	$ -	0.0%
Tax Income & Tax	$ 1,900.00	$ 190.00	19.0%
Statutory Rate (GAAP Effective Tax Rate is Shown Above)			10.0%

COUNTRY B

	Income	Tax	Rate
GAAP Income & Tax	$ 1,000.00	$ 210.00	21.0%
Tax Rate Deal (Reduce Rate to 21% from 40%)	$ -	$ -	0.0%
Non Deductible Item	$ 600.00	$ 240.00	24.0%
Tax Rate Deal on NonDeductible Item	$ -	$ (114.00)	-11.4%
US Rate Differential	$ -	$ -	0.0%
	$ -	$ -	0.0%
Tax Income & Tax	$ 1,600.00	$ 336.00	33.6%
Negotiated Statutory Rate (GAAP Effective Tax Rate is Shown Above)			21.0%

TOTAL

	Income	Tax	Rate
GAAP Income & Tax	$ 2,000.00	$ 420.00	21.0%
Tax Rate Deal (Reduce Rate to 21% from 40%)	$ -	$ -	0.0%
Non Deductible Item	$ 1,500.00	$ 330.00	16.5%
Tax Rate Deal on NonDeductible Item	$ -	$ (114.00)	-5.7%
US Rate Differential	$ -	$ (110.00)	-5.5%
	$ -	$ -	0.0%
Tax Income & Tax	$ 3,500.00	$ 526.00	26.3%
Weighted Average Statutory Rate (GAAP Effective Tax Rate Above)			15.0%

PRESENTATION #1

COUNTRY A PRESENTS RATE DIFFERENTIAL FROM DOMICILIARY RATE OF 21% (DIFFERENCE OF 11%)
NON DEDUCTIBLE ITEM IS TAX EFFECTED AT THE COUNTRY A STATUTORY RATE OF 10%

COUNTRY B PRESENTS NO RATE DIFFERENTIAL FROM DOMICILIARY RATE OF 21%
NON DEDUCTIBLE ITEM IS TAX EFFECTED AT THE COUNTRY B STATUTORY RATE OF 40%
BENEFICIAL TAX RATE OF 19% IS COMPUTED AND LIKELY NETTED TO GET TO
COUNTRY B NEGOTIATED STATUTORY RATE.

	Income	Tax	Rate
GAAP Income & Tax	$ 2,000.00	$ 420.00	21.0%
Country A			
Rate Differential		$ (110.00)	-5.5%
Non Deductible Item	$ 900.00	$ 90.00	4.5%
County B			
Tax Rate Deal (Reduce Rate to 21% from 40%)		$ -	0.0%
Rate Differential		$ -	0.0%
Non Deductible Item	$ 600.00	$ 240.00	12.0%
Tax Rate Deal on NonDeductible Item		$ (114.00)	-5.7%
			0.0%
Tax Income & Tax	$ 3,500.00	$ 526.00	26.3%

PRESENTATION #2

COUNTRY A PRESENTS RATE DIFFERENTIAL FROM DOMICILIARY RATE OF 21% (DIFFERENCE OF 11%)
NON DEDUCTIBLE ITEM IS TAX EFFECTED AT THE US DOMICILIARY STATUTORY RATE OF 21%
RATE RECONCILING DIFFERENTIAL (11%) ON NON-DEDUCTIBLE ITEM
(PRESENT IN RATE DIFFERENTIAL OR NONDEDUCTIBLE ITEM?)
COUNTRY B PRESENTS RATE DIFFERENTIAL FROM STATUTORY RATE(40%) & DOMICILIARY RATE(21%)
RATE DIFFERENTIAL RECONCILING ITEM (19%) WHICH MUST BE NETTED TO RECONCILE
NON DEDUCTIBLE ITEM TAX EFFECTED AT U.S. DOMICILIARY (COUNTRY B NEGOTIATED RATE) OF 21%
NO RATE DIFFERENTIAL ON NON-DEDUCTIBLE ITEM PRESENTED.

NOTE: THERE ARE OTHER PRESENTATION SCENARIOS WHICH CAN BE MADE RELATED TO COUNTRY B.

	Income	Tax	Rate
GAAP Income & Tax	$ 2,000.00	$ 420.00	21.0%
Country A			
Rate Differential		$ (110.00)	-5.5%
Non Deductible Item	$ 900.00	$ 189.00	9.5%
Rate Differential on Nondeductible Item		$ (99.00)	-5.0%
County B			
Tax Rate Deal (Reduce Rate to 21% from 40%)		$ 190.00	9.5%
Rate Differential		$ (190.00)	-9.5%
Non Deductible Item	$ 600.00	$ 126.00	6.3%
Tax Rate Deal on NonDeductible Item		$ -	0.0%
			0.0%
Tax Income & Tax	$ 3,500.00	$ 526.00	26.3%

<u>*The Mechanics Matter*</u> – As we considered the concept of disaggregation above, we also considered the mechanical application of the 5% threshold. As we note above, how something is defined and how "by nature" is interpreted will determine if a reconciling item is subject to the disclosure threshold. But so too will other mechanical considerations.

The mechanics of the rate reconciliation are important because they drive the existence of a difference (i.e., as we saw in our examples above) and they determine the size of the difference – and accordingly whether such items will be above the 5% disaggregation threshold.

Additionally, defining the mechanics is important because it determines whether there is consistency across companies in their computation.

Collectively, the definitions drive whether the numbers presented have any meaning for investors. Without more precise articulation of the mechanics investors can't ascertain if there is a tax risk or just a computational difference because the US statutory rate – which is not the rate the company will pay in a territorial system – is the starting point of the reconciliation.

What the foreign effects examples above highlight is the need for the FASB to define whether the items within the foreign effects section or the rate reconciliation represent, effectively, the amounts which would appear in a statutory rate reconciliation in that foreign jurisdiction or are they simply reconciling items sized and presented based upon the domiciliary statutory rate (e.g., US statutory rate).

Explanation of Reconciling Items: More Detailed Description of Items Within Eight Categories & Their Persistency is Required (Paragraph 740-10-50-12C) – Our overarching observation from the discussion above is that definitions of reconciling items really matter. How something is defined determines the category it is placed within and the application of further disaggregation criteria. Paragraph 740-10-50-12A(b) puts pressure on the need for a definition of these categories and what "by nature" means as that is the first determinate of the size of a reconciling item – and whether it will be greater than, and subject to, the 5% disaggregation threshold.

We believe that each item within the eight categories – and their disaggregated amounts as noted in the section which follows – must be accompanied by a description of the item which enables investors to understand the nature as well as persistency of the item presented.

We note the language in Paragraph 740-10-50-12C which requires disclosure of the reconciling items, if the nature, effect and year-over-year changes is not otherwise evident. Presumably no further disaggregation will result by nature for the four categories whereby nature disclosure is not required. It is not clear what "effect" is meant as that term is not defined. Additionally, understanding the year-over-year changes might be interesting but does not necessarily facilitate investors understanding the forward persistency of the reconciling items. That is what investors are most interested in.

We think footnotes to the reconciliation table which provide a more comprehensive articulation of the nature, effect, drivers, year-over-year changes and persistency of the items within the reconciliation table is needed for all items.

The Disaggregation Illustration (Paragraph 740-10-55-231) – When discussing the 2023 Proposed Consultation the FASB points to Paragraphs 740-10-50-12A(b) (1) and (2) (see box above) and the illustration in Paragraph 740-10-55-231 (see box below) as what will create greater disaggregation.

740-10-55-231 The following illustrates a rate reconciliation disclosed by a public business entity in accordance with paragraph 740-10-50-12A. The entity is domiciled in the United States and presents comparative financial statements. For the disclosure of foreign tax effects in accordance with paragraph 740-10-50-12A(b)(2), it is assumed that the 5 percent threshold, computed by multiplying the income (or loss) from continuing operations before tax by the applicable statutory federal (national) income tax rate of the jurisdiction of domicile, is met:

a. For Ireland, both at the jurisdiction level and for certain individual reconciling items of the same nature within Ireland
b. For the United Kingdom, for certain individual reconciling items of the same nature within the United Kingdom, but not at the jurisdiction level
c. For Switzerland and Mexico, at the jurisdiction level, but not for any individual reconciling items of the same nature within each jurisdiction.

	Year Ended December 31, 20X2		Year Ended December 31, 20X1		Year Ended December 31, 20X0	
	Amount	Percent	Amount	Percent	Amount	Percent
U.S. Federal Statutory Tax Rate	$ AA	aa %	$ BB	bb %	$ CC	cc %
State and Local Income Taxes, Net of Federal Income Tax Effect (1)	AA	aa	BB	bb	CC	cc
Foreign Tax Effects						
United Kingdom						
Tax rate differential	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Share-based payment awards	AA	aa	BB	bb	CC	cc
Changes in unrecognized tax benefits	(AA)	(aa)	(BB)	(bb)	CC	cc
Other	(AA)	(aa)	BB	bb	(CC)	(cc)
Ireland						
Tax rate differential	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Valuation allowances adjustments	(AA)	(aa)	(BB)	(bb)	CC	cc
Enactment of new tax laws	-	-	BB	bb	-	-
Other	AA	aa	(BB)	(bb)	(CC)	(cc)
Switzerland	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Mexico	AA	aa	BB	bb	CC	cc
Other foreign jurisdictions	(AA)	(aa)	(BB)	(bb)	CC	cc
Enactment of New Tax Laws						
Change in tax rate	-	-	-	-	(CC)	(cc)
Effect of Cross-Border Tax Laws						
Global intangible low-taxed income	AA	aa	BB	bb	CC	cc
Foreign-derived intangible income	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Base erosion and anti-abuse tax	AA	aa	BB	bb	CC	cc
Other	AA	aa	-	-	-	-
Tax Credits						
Research and development tax credits	-	-	(BB)	(bb)	(CC)	(cc)
Energy-related tax credits	(AA)	(aa)	-	-	-	-
Foreign tax credits	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Other	-	-	(BB)	(bb)	-	-
Valuation Allowances	AA	aa	(BB)	(bb)	(CC)	(cc)
Nontaxable or Nondeductible Items						
Share-based payment awards	AA	aa	BB	bb	CC	cc
Goodwill impairment	AA	aa	BB	bb	-	-
Other	AA	aa	(BB)	(bb)	CC	cc
Changes in Unrecognized Tax Benefits	(AA)	(aa)	BB	bb	(CC)	(cc)
Other Adjustments	AA	aa	(BB)	(bb)	(CC)	(cc)
Effective Tax Rate	$ AA	aa %	$ BB	bb %	$ CC	cc %

(1) State taxes in California and New York contributed to the majority of the tax effect in this category.

The specific provisions of Paragraph 740-10-50-12A, B and C are not as robustly discussed with investors. We find they require a great deal of analysis and consideration to get an understanding regarding what the numbers in such an illustration actually represent.

Because of this we are concerned the illustration in Paragraph 740-10-55-231 may connote – in that it is the focus of discussion with investors – more disaggregation than investors may actually receive.

The "by nature" categories in the illustration are illustrative but the language in Paragraph 740-10-50-12A(b)(1) and (2) does not indicate these are the required or the necessary level of disaggregation.

Without concise definitions and greater guidance on the computation of items within the illustration an investor cannot readily conclude the result will be greater disaggregation under the 2023 Proposed Update than they get from the existing SEC Rule.

Further, the FASB's outreach has focused on presenting to investors the above illustration, but it has not addressed the concept of the worldwide versus territorial change in the US taxing system.

This illustration approach may, at first glance in a quick call between FASB and investors, leave investors with an impression that this will be an improvement. But greater communication of the definitional, computational, and theoretical underpinnings of the rate reconciliation amendments is necessary for investors to reach an informed conclusion.

We do not believe the FASB should conclude that improvements in decision-useful information result without providing investors with the robust discussion of definitional, computational, and theoretical issues – as well as the evolution of the FASB's work on the income tax disclosures as presented in the **Appendix** – as we have undertaken herein. One must get behind the illustration to determine what will result from the changes in the 2023 Proposed Update.

Several Other Rate Reconciliation Considerations

We would make several other observations as it relates to disaggregation principles.

- ***Absolute Values (Gross vs. Net)*** – While it is clear that there is to be a gross evaluation of the differences (positive or negative) related to foreign tax effects, the 2023 Proposed Update, does not articulate whether this principal applies to the other categories or reconciling items within the rate reconciliation. We believe this should be clearer.

  We note the issue is addressed in Paragraph BC 19 of the 2023 Proposed Update's Basis for Conclusions and that this appears to be the FASB's objective for all reconciling item disclosures, but this is not stated – from what we can see – in the text of the Topic 740 Codification changes.

- ***Reconciling Items When Income is At or Near Breakeven*** – We also note that the Board decided as stated in Paragraph BC 21 of the 2023 Proposed Update's Basis for Conclusions not to provide guidance on disclosure of items when a company is at or near breakeven (i.e., or when they operate in a jurisdiction with no or minimal statutory tax rates). We believe additional guidance is necessary to ensure that there is consistency of disclosure of reconciling items over time. Guidance that highlights the need for disclosure of significant reconciling items irrespective of the 5% threshold, disclosures relative to prior periods, and those which are expected to have a significant impact on the future effective rate should be required disclosures.

- ***Consistency of Disclosures Over Time*** – We would also note, as is the case in the Ford example, that the 5% threshold, could result in different disclosure items when income and tax expense is volatile. Investors would like consistency in these disclosures over time. It is not clear how the FASB's 2023 Proposed Update addresses that concern for investors. We believe the FASB needs to require consistency across all periods if a particular reconciling item is required to be disclosed because it is above the disaggregation principle in any year presented.

- ***Flow vs. Stock of Differences/Risks*** – Some suggest the disaggregation principle will enable investors to understand tax risk. As we discuss above, that depends on the definition of the reconciling items and the mechanics of their computation. But it is also important to highlight that these rate reconciliations only represent the current period differences or manifestation of risks – not the cumulative risks. Even if applied retrospectively and investor can't conclude the last three years represents the cumulative stock of risks.

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Are the Revisions to the Rate Reconciliation Decision-Useful for Investors?

As we stated above in the *Overarching Considerations* section, investors have indicated – over the last decade of this project's existence – they need a much broader complement of improvements in income tax disclosures than the 2023 Proposed Update provides to enable them to project the forward effective rate for the modeling of tax expense, to understand the connection of tax expense with cash paid for taxes and to better understand tax risk. The FAF's own post implementation review indicates investors need more than what is included in the 2023 Proposed Update.

> *. . . **investors have some difficulty understanding income tax information provided in the financial statements and their level of satisfaction with that information varies**. Moreover, the proposed Concepts Statement indicates that **the Board should consider requiring disclosure of the relationship between financial statement line items if the relationship otherwise is not apparent**. Presently, **the level of aggregation and the inability of investors to link events across statements (balance sheet, income statement, and cash flow statement) limit the ability of disclosures to provide insight into the financial statements**.*

While, as we noted earlier, the FASB indicates the 2023 Proposed Update would:

> *... **allow investors to better assess, in their capital allocation decisions, how an entity's worldwide operations and related tax risks and tax planning and operational opportunities affect** its **income tax rate** and **prospects for future cash flows**.*

The FASB does not in the Basis for Conclusions describe how the revisions to the rate reconciliation and cash paid for taxes – by jurisdiction – the two key provisions of the 2023 Proposed Update act in concert to accomplish this stated objective. Investors are left to that determination. As we consider the changes in the aggregate, we note the following:

- *Creation of Eight Categories* – While creation of the eight standard categories might create greater uniformity across companies, if these categories are so widely understood and already used by preparers, we are not convinced adding them – without definitions of the categories – will add much to the aforementioned investor or FASB objectives.
- *Incorporation of Existing SEC Guidance* – As the SEC requirement already requires disaggregation of all "reconciling items over 5% of statutory tax expense" irrespective of the eight categories in Paragraph 740-10-50-12A(a), we aren't necessarily convinced greater disaggregation will ensue – particularly given four categories (state and local income tax, net of federal (national) income tax effect; enactment of new tax laws; valuation allowances; and changes in unrecognized tax benefits) don't require further breakdown.
- *Three Categories Requiring Disaggregation by Nature* – For those three areas (cross-border tax laws; tax credits; and non-taxable or non-deductible items) requiring disaggregation by nature, the question remains as to whether companies perceive they have not already provided the best description by nature. We aren't sure the illustrative example will necessarily guide them toward more detail.
- *Foreign Tax Effect Category by Nature and Jurisdiction* – As for foreign tax effects – where disaggregation is required by jurisdiction and by nature – we believe there is more work to be done on what items are required to be disclosed as the language is not clear. Further, how the rate differential, for example, is to be computed, what it means, and what it represents to investors needs to be outlined by the FASB as how the number is computed drives what it means and whether there is any information content in the reconciling item. Still further, the FASB implies, but does not explicitly articulate or illustrate how this change enables investors to better understand for example, tax risk.
- *Worldwide Rate Reconciliation in a Territorial Taxing System* – The FASB also needs to tackle the broader theoretical question of whether a worldwide domiciliary rate reconciliation is meaningful for US GAAP when the US (the largest user of US GAAP) has moved to a more territorial system. Disclosure of tax rate differentials from the US statutory rate are not decision-useful to investors if

that tax is never to be paid. For US companies with mostly foreign earnings this US statutory rate reconciliation could be misleading, rather than decision-useful.

- *Description of Reconciling Items* – We also believe the disclosure by nature and a description of year-over-year changes in a reconciling item provides insight into the persistency of reconciling items. Investors need greater description of the nature of the item (not simply a caption) and whether it is expected to persist for it to be decision-useful.
- *Cash Flows by Jurisdictions* – As we note in the discussion of cash flows by jurisdiction which follows, we need additional information to better connect the cash flows by jurisdiction to the income tax and earnings by jurisdiction.

Without resolution of the items above, we are not convinced the FASB has achieved its stated objective as it relates to facilitating capital allocation decisions for investors. The changes are likely "achievable standard setting" because they are only limited changes which provide little decision-useful information.

Our Proposed Solution: Separate Domestic & Total Foreign Earnings Rate Reconciliations

As we have considered the amendments in the 2023 Proposed Update our view, is that perhaps one way forward is to prepare – using the disaggregation principles above, (i.e., with adjustments as we have recommended) – separate domiciliary country earnings rate reconciliation and total foreign earnings rate reconciliation – with the later using a weighted average statutory rate weighted based upon earnings in the respective jurisdictions[22]. This approach would address the fact that the US has moved from a worldwide to a more, but not entirely, territorial system and provide a more meaningful foreign income tax disclosure.

Going this route has better potential to alert investors to the presence of preferential tax arrangements in specific countries without revealing the specific details of these arrangements. Further, this separation of the domiciliary and foreign rate reconciliation may give greater insight into the impact of implementation of global minimum taxes and other cross-border tax effects. Still further, a total foreign earnings rate reconciliation would make the disclosure of cash taxes paid by jurisdiction more reconcilable and meaningful for investors – providing some contextualization for these puzzle pieces as we describe below.

[22] We note that Paragraph 85 of IAS 12 recommends an aggregate or jurisdiction weighted average rate for use under International Financial Reporting Standards. Roche, for example, indicates they use the average weighted tax rate.

DISCLOSURE REGARDING INCOME AND INCOME TAXES BY JURISDICTION

Income Before Income Tax Disaggregated Between Domestic and Foreign & Income Tax Expense Disaggregated Between Domestic (State and Federal) and Foreign – The amendments in the 2023 Proposed Update (Paragraphs 740-10-50-10A & 10B) would require companies report income before income tax disaggregated between domestic and foreign. It would also require income tax expense be disclosed disaggregated between domestic (state and Federal) and foreign. This amendment of Topic 740 is not a substantive change from that required in SEC Regulation S-K Rule 4.08(h) (17 FR 210.4 08(h), which is disclosed in a box above. Rather, it is a change to conform the Codification to existing SEC requirements. We can, for example, already see this level of disclosure in the Ford example provided previously. As such, this revision in Topic 740 is not a significant enhancement for public companies. As it relates to private companies, we support the FASB's decision to require this disclosure for private as well as public companies[23].

For companies with global operations, profits earned outside the country of domicile can be a significant – sometimes representing most of the income before tax and tax expense. That makes understanding the foreign tax picture especially important. We note in the *Overarching Considerations* section, there has been much discussion of the disclosure of jurisdiction level pre-tax GAAP income (and taxable income) as well as tax expense – in addition to cash taxes paid by jurisdiction. Most investors would tell you they would like that level of disclosure. However, if you were to simultaneously advise them that such disclosures would invite scrutiny from other stakeholders or politicians seeking the company pay more tax, they would likely reconsider the level of disaggregation – as it is ultimately investors who pay that higher tax through reduced distributable profits. This creates a balancing act for investors, who seek to hold management accountable for highly aggressive tax planning strategies, but still seek to optimize the benefit of tax differentials.

As we highlight in the rate reconciliation discussion above, the FASB's proposed foreign effects disclosure in the context of a worldwide rate reconciliation and without clear articulation of what is to be disclosed and how the numbers are to be computed (i.e., and what they represent) the disclosures are not likely to facilitate a robust understanding – and decision-useful information to investors – of the foreign tax situation in key jurisdictions. And as we discuss below in the discussion of cash paid for taxes by jurisdiction, that information lacks contextualization to make it decision-useful for investors.

If pre-tax income and tax expense are provided for foreign operations in total only – without a separate rate reconciliation of jurisdiction level earnings and tax expense – readers of the financial statements might have no sense of the importance to the company of the tax concessions that have been won in one particular country. As such, the level of proposed disaggregation would appear insufficient for investors.

We proposed the separate reconciliation of domestic and foreign earnings above to provide investors with greater information linking the rate reconciliation and cash taxes paid without increasing tax risk. We believe this will provide more decision-useful information for investors.

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[23] As we consider the private company considerations related to this topic in the 2023 Proposed Update's Basis for Conclusions Paragraphs BC 37-39, we disagree with respondents views that such information is not needed or decision-useful to private companies.

CASH TAXES PAID

Support Disclosure, But Not in Isolation – We support the 2023 Proposed Update provision that would require companies to disclose cash paid for taxes to any jurisdiction exceeding 5% of a company's total tax payments – but we do not support the disclosure in isolation.

Investors need greater contextualization of this cash taxes paid both foreign and domestic. Providing cash paid for income taxes without:

i. better connection to foreign tax expense and foreign earnings as would be provided by our proposed reconciliation revision;
ii. resolution of the questions regarding the foreign effects elements of the reconciliation as we describe previously;
iii. a rollforward of current taxes payable/receivable; and
iv. greater detail on the cash paid for taxes including a gross and net basis, disaggregated by the year to which the payment relates, and with information regarding significant and unusual tax payments;

the disclosure is akin to providing puzzle pieces without a picture, knowledge of the number of pieces to the puzzle, and no corner pieces.

Only with this additional information will the proposed disclosures be decision-useful to investors.

Need Our Proposed Total Foreign Rate Reconciliation & Resolution of Foreign Effects Disaggregation Questions to Better Contextualize – As we highlight above, we understand the risk to investors of jurisdictional reporting of tax and income information, and we have proposed a solution whereby the rate reconciliation would be prepared separately for the country of domicile and then all foreign jurisdictions in the aggregate, using a weighted average statutory tax rate as the starting point.

Investors also need the questions we raise above regarding the foreign effects disaggregation disclosures resolved to be able to understand what the reconciling items represent economically.

These revisions would give investors total foreign earnings; total foreign tax expense; a description and understanding of the foreign rate reconciling items by jurisdiction along with the cash paid for all foreign jurisdiction – along with cash paid by jurisdiction. This would provide more context for investors and enable them to create their own country-by-country reconciliations.

Need Rollforward of Current (And Deferred) Taxes Payable/Receivable to Better Contextualize – As we note in the *Overarching Considerations* section, we have repeatedly advised the FASB that investors need a rollforward of current tax balances such that they can connect the balance sheet amounts to the income tax expense on the income statement and the cash taxes paid to the statement of cash flows.

We believe the FASB must mandate this disclosure – and that this requirement should be disaggregated by domestic and foreign. This should not be a significant cost burden as these accounts should already be reconciled as part of an effective internal control system. This rollforward – along with a similar one done for deferred tax balances – would make the disclosure substantially more meaningful. These are elements of effective internal controls and should be a part of "achievable standard setting."

Further, as we note in the *Overarching Considerations: Improvements in Tax Disclosures Sought by Investors Circa 2016* section, the FAF found that: "*Presently, the level of aggregation and the inability of investors to link events across statements (balance sheet, income statement, and cash flow statement) limit the ability of disclosures to provide insight into the financial statements.*" This rollforward

requirement would facilitate the FASB meeting the needs of investors as found in the FAF's post-implementation review.

Need Cash Paid for Taxes Gross and Net, By Year, With Identification of Significant or Unusual Tax Payments – In addition to needing cash paid for taxes gross and net by year, investors also need description and quantification of significant or unusual tax payments to identify anomalies. If the cash paid for taxes disclosures are meant to provide investors with an indication of tax risk by communicating to them the normal level of cash taxes paid, the FASB also needs to require companies to provide cash taxes paid by year, gross and net, and include disclosure of cash paid or received related to any unusual settlement or taxes in a particular jurisdiction for the number to be meaningful. Significant changes in unrecognized tax benefits, could for example, alter the cash flow pattern making the jurisdictional cash paid disclosures less meaningful.

As an example, investors need to know the cash taxes yet to be paid under the backloading of payments under the TCJA. This is an illustration of a situation where cash paid for taxes is substantially disconnected (i.e., due to the back ending in years six to eight of the expense incurred in a much prior period) from the income tax expense recognized which distorts the usefulness (i.e., in understanding the trend and any tax risk) of the cash taxes paid disclosure to investors.

Ability to Use to Identify Tax Risks & Opportunities: Cash Taxes Paid, Usefulness Limitations – Some suggest the cash taxes paid will enable investors to assess the risk of tax rate hikes or tax risks, but delays in payment of taxes; significant and unusual tax payments; and the fact that the amounts are not disclosed by tax years, gross and net, limits the usefulness of such disclosures to investors. Investors would need the cash taxes paid, gross and net, in each calendar year by tax year and the aforementioned contextualization to make this information useful. With that contextualization and the disaggregated rate reconciliations, this information could be useful to investors.

The FASB indicates the objective of the changes in this 2023 Proposed Update is to provide investors with an ability to identify tax risks and opportunities. What the FASB has not done – as with the rate reconciliation – is explain exactly how investors can use the cash taxes paid – without the improvements we suggest – to this end.

Cash Held in Foreign Jurisdictions – Finally, investors told FASB seven years ago in our 2016 comment letter that they wanted disclosure of cash held in foreign jurisdictions. See our discussion above related to the 2016 comment letter in the *Overarching Considerations* section – specifically Item #8 under the *Improvements in Tax Disclosures Sought by Investors Circa 2016* subsection.

While it may be the case that the 2017 TCJA reduced the amount of cash "trapped" or "stranded" in foreign jurisdictions because, generally speaking, those funds will now have already been taxed under the US's territorial tax system – investors still find it useful to know the extent to which their companies' earnings are sitting outside the country's borders.

As we highlight above, there are still significant payments to be made under the 2017 TCJA. Further, it is not inconceivable, for instance, to have a scenario in which regulatory restrictions (i.e., particularly in regulated entities such as financial institutions) make it impossible for a company to repatriate foreign profits and cash even after those profits have been taxed abroad.

We do not believe this cash held in foreign jurisdiction disclosure request should be disregarded with the 2017 TCJA as investors still care deeply about the location of cash within subsidiaries and potential restrictions in the movement of such cash amounts to meet dividend requirements. Whether as part of

income taxes, segments or another standard setting project, investors are still keenly interested in this disclosure because it communicates the risk of not being able to move cash to the parent to pay dividends.

See also the discussion of Paragraphs BC 29 to BC 35 of the 2019 Proposed Update in the discussion of undistributed earnings in foreign subsidiaries which follows.

OTHER CHANGES

The changes above are the most publicized of the amendments in the 2023 Proposed Update. We note, however, that there are several other changes included within the 2023 Proposed Update. We believe these items may need greater prominence in discussions with investors as they likely remove useful information for investors.

Unrecognized Tax Benefits

We oppose the provision in the 2023 Proposed Update that would relieve companies of the responsibility to disclose expected changes in unrecognized tax benefits in the ensuing 12 months as made in Paragraph 740-10-50-15 and illustrated in Paragraph 740-10-55-217.

We addressed the topic specifically in our 2016 comment letter. See our discussion in the *Overarching Considerations* section under Item #10 of the *Improvements in Tax Disclosures Sought by Investors Circa 2016* subsection. More broadly in that 2016 letter, we commented regarding the fact that financial statements are replete with forward-looking financial information and the area of unrecognized tax benefits shouldn't be an exception. Forward-looking information is not a valid basis for the FASB's removal of this disclosure.

Further, it seems inconsistent to remove this disclosure but to include unrecognized tax benefits as one of the most important eight categories in the rate reconciliation. Its inclusion as one of the key eight categories highlights its importance to the rate reconciliation, so why then is an estimation of the future impact of such an important item being removed from the disclosure requirements?

Permitting companies not to disclose a change in management's viewpoint on the likelihood of success in a tax dispute could easily leave investors blindsided.

Further, the failure to require disaggregation of unrecognized tax benefits by nature in the rate reconciliation limits their decision-usefulness.

We also note that Paragraph BC 36 says respondents to the previous consultations supported this disclosure being removed. The Basis for Conclusions did not say those respondents were investors. We reviewed other investor responses and could not find investors in support of removing this provision. We opposed removal of this provision in our 2016 comment letter. We are concerned only preparer feedback is being incorporated into the decision to remove this provision.

We are also concerned that investor outreach on the 2023 Proposed Update did not focus on the removal of this item as it was considered as a carryover from 2019.

Undistributed Earnings in Foreign Subsidiaries

We address in the *Overarching Considerations* section and in the rate reconciliation subsection of the *Comments on Specific Provisions of The Proposal* section how the Tax Cuts and Jobs Act of 2017 allowed companies to repatriate a substantial portion of their foreign profits at preferential tax rates and how the US moved from a worldwide tax system to more of a territorial tax system making the concept of undistributed earnings in foreign subsidiaries less relevant. The last sentence of Paragraph BC 36 in the

Basis for Conclusions acknowledges this. We also considered Paragraphs BC 29 to BC 35 of the 2019 Proposed Update where this was also addressed[24]. Overall, it remains unclear to us why only Paragraph 740-30-50-2(b) was removed in the 2023 Proposed Update. The relative irrelevance of Paragraph 740-30-50-2(b) with respect to the cumulative amount – yet retaining current period disclosure differences in the remainder of 740-30-50-2 – is unclear. If there are current amounts, there will presumably be cumulative amounts over time.

Again, we note that Paragraph BC 36 says respondents to the previous consultations supported this disclosure being removed. It did not say those respondents were investors. We reviewed other investor responses and could not find investors in support of removing this provision. We are concerned only preparer feedback is being incorporated into the decision to remove this provision.

We would note this discussion of the undistributed earnings in foreign subsidiaries – specifically the FASB's acknowledgement in Paragraphs BC 29 to BC 35 of the 2019 Proposed Update and Paragraph BC 36 of the 2023 Proposed Update that foreign subsidiaries will not be taxed at US rates – provoked our question, and extensive discussion, above regarding the theoretical basis for a domiciliary rate reconciliation when the US is no longer a worldwide taxing system. As we discuss there, we don't believe accounting theory would suggest the US domiciliary rate is the relevant starting point for a rate reconciliation for US GAAP – applied most significantly by US domiciliary entities – when the US is no longer a world-wide taxing jurisdiction.

We are concerned that investor outreach did not focus on the removal of this item as it was considered as a carryover from 2019, but more importantly we believe the lack of discussion of the basis for this change – the 2017 Tax Cuts and Jobs Act – during investor outreach may not have triggered a conversation with investors regarding the usefulness of the rate reconciliation given the change in the US taxing system.

[24] We disagree with the reduced relevance of disclosures regarding cash, cash equivalents and marketable securities post the 2017 TCJA as described in Paragraphs BC 29 to BC 35 of the 2019 Proposed Update. See also *Cash Taxes Paid* section above.

CFA Institute

Change to Master Glossary (Nonpublic Entity vs. Public Entity)

The 2023 Proposed Update on Pages 10 and 11 removes the terms Nonpublic Entity (Definition 5) and Public Entity (Definition 2) from the Master Glossary. Review of the Master Glossary highlights there are five definitions of Nonpublic Entity and three definitions of Public Entity, such that this will reduce the number of each by one.

These stricken terms are replaced with the terms "Public Business Entities" (also defined in the Master Glossary) and the term "Other Than Public Business Entities" (not defined in the Master Glossary, but presumably anything other than the public business entity in the defined term).

We haven't studied the differences in the various definitions of "public entity" and "nonpublic entity" nor the detailed change which will result from the replacement of the use of term "Public Business Entities" rather than "Public Entity" and no detail appears to have been provided analyzing whether such change will result in greater or fewer entities being scoped into the disclosure provisions of the 2023 Proposed Update. As we note below, CFA Institute has a long-standing position that the nature of the holding (private or public) of a company's common stock does not change the information an investor needs to make investment decisions.

Private Company Considerations & Differences

We observe the discussion of private company considerations in the Basis for Conclusions, specifically related to the rate reconciliation in Paragraphs BC 22-25 and to income taxes paid in Paragraphs BC 32-34. The language includes multiple references to the Private Company Decision-making Framework.

We have previously communicated to the FASB that the formation of the Private Company Council ("PCC") would have deleterious impacts on financial reporting such as back door accounting standard setting (e.g., goodwill). We have also noted that the existence of separate private company standards operates on the incorrect premise that private company investors have greater access to management and the financial records of the company[25] than to public company investors. This discussion in the Basis for Conclusions seems to perpetuate this mistaken premise. Paragraph 2.7 of the Private Company Decision-making Framework referred to in Paragraph BC 25 is inconsistent with what investors in private companies advise us. We have advised the FAF including in our response to the most recent FAF Strategy Consultation that the PCC should be evaluated and eliminated as private markets have substantially changed since it was formed.

For that reason, we do not support any of the differences in disclosures between Public Business Entities and Other Than Public Business Entities as investor information needs are no different based upon the holding of a company's common stock.

The fact that Other Than Public Business Entities need only provide a qualitative disclosure about specific categories of items and individual jurisdictions in the rate reconciliation, and not a quantitative rate reconciliation, is remarkable given the growth in private companies over the last decade. There are many large private companies with international operations.

We note in our review of Paragraphs BC 22-25 the greater weight being placed on the feedback of preparers over investors/users.

[25] We note the comments in Paragraph BC 32 which indicate investors in private companies could ask for the tax returns of the companies in which they invest. Some general partner or large investors could ask – and possibly – access such information, but the majority of limited partners and other investors could not obtain such information.

It would also be helpful if the FASB staff would present the differences between public and private companies in a summarized tabular fashion to enable investors to more readily identify the differences being created.

Interim Disclosures

Rate Reconciliation – We are not opposed to a description of changes in significant reconciling items rather than a complete rate reconciliation at interim. That said, however, we would like to see quantitative disclosure of potential impacts of these significant reconciling items such that investors can assess impacts on the overall effective rate.

A qualitative description of a potential significant change is not sufficient.

As noted above, we do not support the failure to include a similar requirement for private companies doing interim reporting.

Cash Paid for Taxes – As it relates to the ability not to disclosure cash paid for taxes on an interim basis, we believe that if there are significant or unusual payments made in interim periods in foreign jurisdictions these should be disclosed.

Transition & Effective Date

We always support an effective date as soon as is practicable and a retrospective approach.

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Thank you for your consideration of our views and perspectives. We would welcome the opportunity to meet with you to provide more detail on our letter.

CFA Institute

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APPENDIX

ANALYIS OF CHANGES IN FASB PROPOSED UPDATES

	2016		2019		2023
1	***Public Entity Definition*** – "Public Entity" replaced with "Public Business Entity". (A)	1	"Public Entity" replaced with "Public Business Entity". (A)	1	Same as 2019. "Public Entity" replaced with "Public Business Entity". (A)
2	***Enacted Tax Law Changes*** – Disclosure of enacted tax-law changes likely to have an effect on reporting entity in the future. (A)	2	Not carried over from 2016.	2	Not carried over from 2016.
3	***Pre-Tax Book Income (Foreign vs. Domestic)*** – Disaggregation of pre-tax book income between domestic and foreign. (A)	3	Disaggregation of pre-tax book income (and before intra-entity eliminations) between domestic and foreign. (A)	3	Disaggregation of pre-tax book income between domestic and foreign. (A)
4	***Income Tax Expenses (Foreign vs. Domestic)*** – Disaggregation of income tax expense between domestic and foreign. (A)	4	Disaggregation of income tax expense between Federal, state, and foreign. (A)	4	Same as 2019. Disaggregation of income tax expense between Federal (national), state, and foreign. (A)
5	***Taxes Paid (Foreign vs. Domestic)*** – Disaggregation of income taxes paid between domestic and foreign. (A)	5	Disaggregation of income taxes paid between Federal, state, and foreign. (A)	5	YTD amount of income taxes paid (net of refunds) disaggregated by Federal (national), state, and foreign and reported on both an interim and annual basis. (A)
6	***Significant Taxes Paid in Foreign Jurisdictions*** – Disclosure of income taxes paid to any country that's "significant" relative to total taxes paid. (A)	6	Not carried over from 2016.	6	Annual disclosure of taxes paid to foreign jurisdictions if the payment exceeds 5% of total tax payments (net of refunds) for that year. No interim disclosure required. (A)
7	***Change in Indefinite Reinvestment Assertion*** – Explanation for any change in assertion regarding the indefinite reinvestment of undistributed foreign earnings and disclosure of the amount of those undistributed foreign earnings has changed. (A)	7	Not carried over from 2016.	7	Not carried over from 2016.
8	***Disclosure of Cash in Foreign Subs*** – Disclosure of the aggregate amount of cash, cash equivalents, and marketable securities held by foreign subsidiaries. (A)	8	Not carried over from 2016.	8	Not carried over from 2016.
9	***Unrecognized Tax Benefit Reconciliations*** – Within reconciliation of beginning and ending unrecognized tax benefits, separation of those settled with deferred tax assets from those settled in cash. (P)	9	Not carried over from 2016.	9	Not carried over from 2016.
10	***Location of Unrecognized Tax Benefits –*** Disclosure of balance sheet line item in which a portion of unrecognized tax benefits have been recognized and the related dollar amount. If not recognized those amounts should be disclosed separately. (P)	10	Disclosure of balance sheet line item in which a portion of unrecognized tax benefits have been recognized and the related dollar amount. (P) Removed 2016 provision to disclose separately amounts not recognized.	10	Not carried over from 2019.
11	***Valuation Allowance Explanations*** – Disclosure and explanation of valuation allowance recognized and released during the period. (P)	11	Disclosure and explanation of valuation allowance recognized and released during the period. (P)	11	Not carried over from 2019.
12	***Unrecognized Tax Benefits Offsetting Deferred Tax Assets*** –The amount of unrecognized tax benefits offsetting deferred tax assets for carryforwards. (P)	12	The amount of unrecognized tax benefits offsetting deferred tax assets for carryforwards. (P)	12	Not carried over from 2019.
13	***Unrecognized Tax Benefits Reversing in Next 12 Months*** – Eliminate the requirement that companies disclose changes in unrecognized tax benefits expected in next 12 months. (A)	13	Eliminate the requirement that companies disclose changes in unrecognized tax benefits expected in next 12 months. (A)	13	Same as 2019. Eliminate the requirement that companies disclose the nature and estimated range of changes in unrecognized tax benefits expected in next 12 months. (A)

14	***Rate Reconciliation SEC Incorporation*** – Modify rate reconciliation to be consistent with existing SEC regulation requiring disaggregation of any reconciling item exceeding 5% of the expected tax (i.e., the tax arrived at by multiplying pre-tax book income by the statutory rate). (P) Proposal would further modify the requirement to explain the changes in those reconciling items from year-to-year. (P)	14	Modify rate reconciliation to be consistent with existing SEC regulation requiring disaggregation of any reconciling item exceeding 5% of the expected tax (i.e., the tax arrived at by multiplying pre-tax book income by the statutory rate). Proposal would further modify the requirement to explain the changes in those reconciling items from year-to-year. (P)	14	Modify rate reconciliation to be consistent with existing SEC regulation requiring disaggregation of any reconciling item exceeding 5% of the expected tax (i.e., the tax arrived at by multiplying pre-tax book income by the statutory rate.) (P) The objective of the rate reconciliation disclosure has been added. (P) Provision to require explanation of year-to-year changes was not carried over from 2019. See revision below. Requires companies to place reconciling items in one of eight categories. (P) Disaggregation by "nature" for qualifying reconciling items in the categories known as cross-border tax laws, tax credits, and nontaxable or nondeductible items. (P) Disaggregation by country and by "nature" for qualifying reconciling items in the category called foreign tax effects. (P) No further disaggregation by “nature” for qualify reconciling items in the categories known as enactment of new tax laws, valuation allowances, or changes in unrecognized tax benefits. (P) Ability of companies to create their own categories for reconciling items not fitting clearly into any of the eight categories. (P) For the state and local category, providing of a qualitative description of the state and local jurisdictions contributing to the majority of the effect of the state and local income tax category. (P) State and local tax category and foreign effects category reflect taxes in those jurisdictions. Other categories are related to domiciliary jurisdiction. (P) A public business entity would provide a description, if not otherwise evident, of individual reconciling items by nature, effect, and significant changes in year-over-year changes. (P) Requires quarterly description of any reconciling items resulting in significant changes in the estimated annual effective tax rate from the effective tax rate of the prior annual reporting period. (P) For entities other than public business entities, qualitative disclosure of specific categories of

					items and individual jurisdictions that result in a significant difference between the statutory tax rate and the effective tax rate. (NP)
15	***Carryforwards by Expiration*** – Disclosure of Federal, state, and foreign carryforwards (not tax effected) by year of expiration for the first five years after the reporting date and in total after year five. (P) For entities other than public entities, disclosure of total amounts of Federal, state, and foreign carryforwards (not tax effected) and their expiration dates. (NP)	15	Disclosure of Federal, state, and foreign carryforwards (tax effected and before any valuation allowance) by year of expiration for the first five years after the reporting date and in total after year five. (P) Disclosure, too, of carryforwards that don't expire. For all carryforwards, disclosure of associated valuation allowance (P). For other than public business entities, disclosure of Federal, state, and foreign credit carryforwards and of other Federal, state, and foreign carryforwards (not tax effected), broken out between carryforwards that expire and those that don't expire. Disclosure would also include expiration dates (or a range of expiration dates). (NP)	15	Not carried over from 2019.
16	***Disclosure of Deferred Tax Assets Related to Carryforwards –*** Disclosure before valuation allowance of deferred tax assets for each of Federal, state, and foreign carryforwards. (P) Further disclosure would show breakdown of carryforwards by year of expiration for the first five years and in total thereafter. (P)	16	Not carried over from 2016. See above regarding valuation allowances.	16	Not carried over from 2016.
17	***Foreign Jurisdiction Agreements*** – Disclosure of agreements made with governments, and commitments made to that government, as part of arrangements that would reduce or may reduce a company's tax burden. (A)	17	Not carried over from 2016.	17	Not carried over from 2016.
18	***Materiality*** – The amendments include language to promote the use of discretion in making materiality determinations. (U)	18	Not carried over from 2016.	18	Not carried over from 2016.
19		19	***Cash Flow Statement Clarification*** – Clarification that disclosure in the cash-flow statement relating to taxes paid is an interim reporting requirement. (U)	19	Not carried over from 2019.
20		20	***Cumulative Temporary Difference Related to Undistributed Earnings in Subsidiaries*** – Removal of requirement that companies disclose cumulative amount of each type of temporary difference when a deferred tax liability hasn't been recognized. (U)	20	Same as 2019. Removal of requirement that companies disclose cumulative amount of each type of temporary difference when a deferred tax liability hasn't been recognized. (A)

(P) = Provision is applicable to public business entities
(NP) = Provision is applicable to non-public business entities
(A) = Provision is applicable to all entities
(U) = Unclear from FASB text if provision applied to all entities, to public business entities, or to other than public business entities.