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May 30, 2023

Via email: director@fasb.org

Hillary H. Salo
Technical Director
Financial Accounting Standards Board
801 Main Avenue
PO Box 5116
Norwalk, CT 06856-5116

RE: File Reference No. 2023-ED100

Dear Ms. Salo:

Tax Executives Institute ("TEI" or the "Institute") is pleased to provide comments on FASB Exposure Draft, Proposed Accounting Standards Update—*Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which was issued on March 15, 2023 (the "Proposed Update"). We commend FASB staff for their thoughtful approach to proposing updates in this particularly complex area of financial reporting. Our comments reflect a careful balance between recognition of the environment in which these changes are being proposed and our overarching concern that certain granular tax disclosure information may be overly confusing and not useful to investors.

TEI Background

TEI is the preeminent association of in-house tax professionals worldwide. Our approximately 7,000 members represent more than 2,800 of the leading corporations in North and South America, Europe, and Asia. TEI membership is exclusive to individuals employed by corporations and other for-profit business enterprises in a tax-related function. Its members are dedicated to developing and effectively implementing sound tax policy, promoting the uniform and equitable enforcement of the tax laws, and reducing the cost and burden of tax administration and compliance to the benefit of taxpayers and governments alike.

TEI offers a unique perspective, especially in regard to the financial accounting for income taxes. Its members work for companies involved in a wide variety of industries, and thus, their collective perspectives are broad-based and not tied to any particular special interest group. Further, TEI members are responsible for

both the tax affairs of their employers and the reporting of tax information in their employers' financial statements. Thus, they are well-versed in the complexities of the tax laws, as well as the financial accounting rules. We believe the diversity, background, and professional training of TEI's members place us in a uniquely qualified position from which to comment on the FASB's proposed accounting standards updates. Along with the government and the investing public, our members have the most at stake in trying to craft a financial reporting system that fairly presents the results of company operations and is as transparent, administrable and cost-effective as possible.

General Views on the Proposed Update

We appreciate that the FASB is under significant pressure to respond to investors' desire for more granular financial data in financial statements and generally welcome amendments to Topic 740 that increase the usefulness of income tax disclosures to investors. TEI members have expressed concern over the complexity of new tax information that would be disclosed under the proposed amendments, assumptions that would be required to use the granular information in investment decision-making, and the real possibility that the information could be misinterpreted and thus misapplied, particularly when amounts are immaterial to a company's financial position. We also share the concerns raised by the U.S. Chamber of Commerce in its February 7, 2023 letter to FASB Chair Richard R. Jones[1] and, in this regard, respectfully request that the FASB, when deliberating this and future updates, consider not only how disclosed tax information may be used to improve financial decision-making, but also how it can be misused.

Should the FASB decide to move forward with some version of the proposed amendments, we offer the following comments, which are further developed below in responses to the specific Questions for Respondents:

- We agree with the application of a quantitative 5 percent threshold consistent with existing SEC Regulation S-X 210.4-08(h)(2), as well as the Board's finding that "the 5 percent threshold offers an appropriate balance between providing investors with decision-useful information and the incremental costs of reporting the information."[2] This materiality threshold is critical to maintaining the FASB's overarching objective for this project—i.e., providing information that is useful to present and potential investors

[1] *See* Letter from U.S. Chamber of Commerce to FASB Chair Richard R. Jones (Feb. 7, 2023), published by Tax Analyst, 2023 TNTF 27-11 (FEB. 7, 2023) ("A significant amount of income tax information is already disclosed in the financial statements and footnotes for investors…. In particular, we are concerned about the materiality of the disaggregated information the project seeks to disclose and the role of activists in seeking to use this information to vilify firms and deter investments…."); *see also* Nathan J. Richman, *Chamber of Commerce Objects to Expanded Tax Financial Disclosure*, 2023 TNTF 27-5 (Feb. 13, 2023).

[2] Proposed Update at 27.

in making rational investment decisions. We, therefore, urge the FASB to apply this threshold to the entire rate reconciliation, including the proposed category disaggregation and the jurisdiction-specific cash tax payment disclosures. A consistent determination of materiality for the related tax disclosures is critical to the usefulness and operability of the proposed amendments. Further, the cost, complexity, and potential unintended consequences of disclosing items not meeting the disclosure threshold far exceed any legitimate use of the information.

- TEI suggests eliminating the rate reconciliation categories for valuation allowance and changes in unrecognized tax benefits and instead netting the valuation allowance and unrecognized tax benefits against the tax impact of the items to which they relate. Disclosure of rate reconciliation items net of a related valuation allowance or unrecognized tax benefit aligns with the presentation intended by the FASB's guidance under ASC 740's realization, recognition, and measurement standards. This is especially true for recurring valuation allowances and changes in unrecognized tax positions for assets that are never realized. For example, grossing up a tax credit with a full valuation allowance for an asset that will never be realized would be difficult for a user to correlate under the Proposed Update.

- TEI further recommends that the FASB limit disclosure within the "Foreign tax effects" line item to require disaggregation only by jurisdiction (i.e., country) at the 5 percent materiality threshold on a net basis, thereby removing the requirement for further disaggregation by nature. This needed change would provide rate impacts for significant foreign jurisdictions at an appropriate level of detail (by country) without overloading financial statement users with information that is not useful in making decisions.

- The FASB should not require disclosure of cash tax payments in interim periods disaggregated by federal (national), state, and foreign taxes. The timing of tax payments is dictated by diverse local tax rules across jurisdictions worldwide and has little correlation with the tax expense recognized in the same quarter. The interim disclosure of income tax payments could be confusing and misleading, and the added cost and time required to prepare such a summary would be enormous—far exceeding any benefit the data would have for legitimate investor analysis.

Comments on Specific Proposals

In the following paragraphs, we provide comments on the main provisions of the proposed amendments, following the *Questions for Respondents* provided on pages 4-7 of the Proposed Update.

Rate Reconciliation

Question 1. *The amendments in this proposed Update would require that public business entities disclose specific categories in the rate reconciliation, with further disaggregation of certain reconciling items (by nature and/or jurisdiction) that are 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.*

a. *Should any of the proposed specific categories be eliminated or any categories added? Please explain why or why not*.

TEI recommends eliminating the categories for "Valuation allowances" and "Changes in unrecognized tax benefits." The effects of a valuation allowance should not be reported separately, but rather included in the tax impact of the rate reconciliation item to which the valuation allowance relates. This presentation removes uncertainties surrounding the core item to which a valuation allowance relates by instead reflecting line items at the amount that meets the standard's more-likely-than-not realization threshold. Reporting reconciling items on a tax return basis separately from their related valuation allowance amounts would result in a gross up of rate reconciliation items that would be misleading and would not provide decision-useful information.

The same rationale applies equally to changes in unrecognized tax benefits with the added concerns that inclusion of this proposed separate reporting category jeopardizes confidential information and may result in unintended tax scrutiny, or worse, meritless tax adjustments by foreign tax administrators, putting U.S. multinational entities at a competitive disadvantage as compared to non-U.S.-based companies that are not subject to similar disclosure requirements.

In addition, the proposed separate disclosure is unnecessary because the current tax footnote disclosure of the roll-forward of a company's global unrecognized tax benefit liability provides sufficient information to financial statement users on the reporting period's changes in unrecognized tax benefits. The potentially adverse consequences of the proposal far outweigh the utility this granular tax information could provide to investors. Thus, we urge the FASB to eliminate the separate reporting category for changes in unrecognized tax benefits and instead require any changes to unrecognized tax benefits to be reported in the rate reconciliation within the items to which the changes relate. This approach provides users with rate reconciliation items after consideration of the standard's recognition and measurement criterion pursuant to ASC 740-10 and avoids potentially harmful unintended consequences.

b. *Should incremental guidance be provided on how to categorize certain income tax effects in the proposed specific categories? If so, please describe the specific income tax effect and explain how it should be categorized and why*.

We recommend that the FASB adopt incremental guidance that defines the classification of items in the "Enactment of new tax law" category to discrete, one-time effects of a change in law enacted in the current reporting period. Companies have historically used a line item like this to reflect the impact of the change in a statutory tax rate on deferred taxes. Guidance is needed because the category could be interpreted as requiring disclosure of a reconciling item under the previous law with an incremental amount disclosed on the "Enactment of new tax law" line reflecting the impact of the new tax law on the item. For example, if the tax law changed, increasing the benefit of the Research Credit from 20 percent to 25 percent, it does not seem useful to separate the incremental 5 percent benefit into a separate line item. A user would know the tax law increased, and, if material, the impact would be discussed in the management discussion and analysis section of the financial report.

We also urge the FASB to issue incremental guidance for the disclosure of "Effect of cross-border tax laws," clarifying that the cross-border taxes in the rate reconciliation should be disclosed net of foreign tax credits. To illustrate, the tax effects of GILTI and Subpart F included in this category would include the impact of foreign tax credits. The combined presentation is more decision-useful because a complete understanding of the tax impact of these cross-border income inclusions must take into account the applicable tax credit offset. The net impact of these income inclusions is the meaningful amount. Similar to our arguments against disaggregation of the Valuation allowances, Changes in unrecognized tax benefits, and Enactment of new tax law categories, separate disclosure of Effects of cross-border tax laws without the relevant net effects misstates the impact of these income inclusions and could result in confusion and mislead investors.

For the "Foreign tax effects" category, the Proposed Update explains:

> the Board agreed that breaking down this category into significant reconciling items by jurisdiction (country) and by nature would provide necessary additional transparency. If a foreign jurisdiction meets the 5 percent threshold, it would be separately disclosed as a reconciling item. Within any foreign jurisdiction (regardless of whether it meets the 5 percent threshold), the reconciling item would be separately disclosed by nature if its gross amount (positive or negative) meets the 5 percent threshold. In some cases, a foreign jurisdiction in total may not meet the 5 percent threshold, but there could be individual reconciling items, which meet the 5 percent threshold, disclosed for that foreign jurisdiction.

TEI urges the Board to reconsider the proposal to require reconciling items within the "Foreign Tax Effects" category to be by both jurisdiction (country) AND nature. The net tax impact of a

jurisdiction that exceeds the 5 percent threshold is the company's best representation of the effect of that jurisdiction's current period tax impact and would be the best basis for investors to model future tax impacts. Further disaggregation by nature results in the presentation of very granular information and could confuse investors. For example, separately identifying a specific country's rate differential, change in unrecognized tax benefits, valuation allowances, and other rate reconciliation details could be overly complex for readers and cause confusion, thereby failing to achieve the stated intention of helping investors and resulting in the opposite effect. If the Board believes additional disclosures would be useful, the reporting could be supplemented with a requirement to provide a narrative explanation of the nature of the primary rate impacting items driving the disclosed jurisdiction's net tax impact.

c. *Do you agree with the proposed 5 percent threshold? Please explain why or why not.*

TEI agrees with maintaining the current SEC 5 percent materiality threshold for rate reconciliation disclosure but recommends subjecting the entire rate reconciliation disclosure to the threshold, including the specified rate reconciliation categories. There should be no separate disclosure in the rate reconciliation of items not meeting the 5 percent SEC threshold and, regarding Foreign tax effects which is discussed further below, no disaggregation beyond that of the net jurisdictional impact. For example, when a category in total does not meet the 5 percent threshold and there are no subcomponents of the category that meet the threshold, the category would not be separately disclosed and would be included in the "Other" category. We recognize the FASB's desire to standardize the disclosed rate reconciliation categories to reduce diversity in practice and improve the usefulness of rate reconciliation information. We strongly believe, however, that the cost, complexity, and potential unintended consequences of disclosing items not meeting the disclosure threshold far exceed any legitimate usefulness of information provided in the proposed rate reconciliation. Including immaterial details in an exceptionally complex and detailed disclosure is likely to confuse investors, result in inappropriate assumptions, and create undue burdens for companies.

Question 2. *The proposed amendments would require that public business entities provide a qualitative description of the state and local jurisdictions that contribute to the majority of the effect of the state and local income tax category. A qualitative description of state and local jurisdictions was selected over a quantitative disclosure because state and local tax provisions are often calculated for multiple jurisdictions using a single apportioned tax rate. Do you agree with the proposed qualitative disclosure as opposed to providing a quantitative disaggregation? Please explain why or why not.*

TEI agrees with providing a qualitative description rather than a quantitative disclosure when the "State and local income tax" category meets the SEC 5 percent disclosure threshold. We also agree with the underlying rationale proposed in the question—i.e., the state tax liability is often calculated with a single tax rate—because the burden of providing a quantitative disaggregation would far exceed any legitimate interests of investors.

Question 3. *The proposed amendments would require that public business entities provide an explanation, if not otherwise evident, of individual reconciling items in the rate reconciliation, such as the nature, effect, and significant year-over-year changes of the reconciling items. Do you agree with the proposed disclosure? Please explain why or why not.*

This proposed update is unnecessary in light of the disclosures already required by SEC regulation S-K for Management's Discussion and Analysis, which already provide users of financial statements with sufficient information on changes in tax between the periods disclosed and those same periods in the prior year. Because this disclosure is also made in interim periods, it provides more timely information to users than the proposed annual disclosure.

Question 4. Not addressed; question is directed to investors.

Question 5. *For preparers and practitioners, would the proposed amendments to the rate reconciliation disclosure impose significant incremental costs? If so, please describe the nature and magnitude of costs, differentiating between one-time costs and recurring costs.*

Compliance with the proposed rate reconciliation disclosure requirements will require financial statement preparers to create systems and procedures to recast existing rate reconciliation details and prepare summaries to address the required categories; coordinate the new data collection and preparation across worldwide tax teams; and implement new procedures and controls over the updated processes required to compile incremental rate reconciliation disclosures. These required activities coupled with the additional costs of working with attestation firms will undoubtedly result in significant one-time costs. On an ongoing basis, significant additional time will be required to identify potential items that meet the prescribed thresholds for separate disclosure. If all disclosures in the rate reconciliation continue to be subject to the SEC 5 percent threshold, and if the proposal is further amended as recommended by TEI in our responses to questions 1(a) and 1(b), the additional efforts required for the initial implementation and ongoing efforts would be partially mitigated.

Question 6. *Are the proposed amendments to the rate reconciliation disclosure clear and operable? Please explain why or why not.*

We commend the FASB Staff and Board for the clarity and operability of the proposed amendments. They would be clearer and more operable, however, if the FASB incorporates the incremental guidance recommended in our responses to questions 1(a) and 1(b), above.

Question 7. *The Board decided not to provide incremental guidance for the rate reconciliation disclosure for situations in which an entity operates at or around break even or an entity is domiciled in a jurisdiction with no or minimal statutory tax rate but has significant business activities in other jurisdictions with higher statutory tax rates. Do you agree with that decision? Please explain why or why not, and if not, what incremental guidance (including the relevant disclosures) would you recommend?*

We agree with the decision not to provide incremental guidance in these instances and instead allow for a company and its auditors to apply judgement as to how to present a rate reconciliation that is relevant and meaningful to investors.

Question 8. *The proposed amendments would require that public business entities provide quantitative disclosure of the rate reconciliation on an annual basis and a qualitative description of any reconciling items that result in significant changes in the estimated annual effective tax rate from the effective tax rate of the prior annual reporting period on an interim basis. Do you agree with that proposed frequency? Please explain why or why not.*

TEI does not agree with the proposed frequency for the reasons expressed in our response to question 3, above. The proposed interim disclosure is not necessary as the existing SEC reporting requirements for Management's Discussion and Analysis provide investors with sufficient information on material changes in tax between interim periods disclosed and those same periods in the prior year.

Income Taxes Paid

Question 9. *The proposed amendments would require that all entities disclose the amount of income taxes paid (net of refunds received) disaggregated by federal (national), state, and foreign taxes, on an annual and interim basis, with further disaggregation on an annual basis by individual jurisdictions in which income taxes paid (net of refunds received) is equal to or greater than 5 percent of total income taxes paid (net of refunds received).*

a. *Do you agree with the proposed 5 percent threshold? Please explain why or why not.*

The disclosure threshold for income taxes paid should be the same 5 percent threshold proposed for the rate reconciliation, ensuring a consistent application of materiality within the related tax disclosures.

b. *Do you agree that income taxes paid should be disclosed as the amount net of refunds received, rather than as the gross amount? Please explain why or why not.*

TEI agrees that the basis for the income taxes paid disclosure should be net of refunds as the disclosure would be consistent with the current disclosure requirement and net payments are the most relevant measure of the impact of taxes on cashflow.

Question 10. Not addressed; question is directed to investors.

Question 11. *For preparers and practitioners, would the proposed amendments to the income taxes paid disclosure impose significant incremental costs? If so, please describe the nature and magnitude of costs, differentiating between one-time costs and recurring costs.*

Proposed amendments to the income taxes paid disclosure for annual periods would not impose significant incremental costs that are foreseeable at this time. Our response to question 13, below, provides an explanation of significant incremental costs associated with the proposed interim disclosure.

Question 12. *Are the proposed amendments to the income taxes paid disclosure clear and operable? Please explain why or why not.*

Proposed amendments to the income taxes paid disclosure for annual periods are clear and operable. The interim period disclosure requirement is not operable and is further discussed in our response to question 13, below.

Question 13. *The proposed amendments would require that all entities disclose (a) income taxes paid disaggregated by federal (national), state, and foreign taxes on an interim and annual basis and (b) income taxes paid disaggregated by jurisdiction on an annual basis. Do you agree with that proposed frequency? Please explain why or why not.*

TEI agrees with the frequency of the annual reporting of income taxes paid by jurisdiction, but strongly disagrees with the proposed interim reporting requirement. Identifying income tax payments for the current annual report disclosure requires a detailed roll-forward and analysis of income tax payable balances in all corporate entities to identify the income taxes paid in each jurisdiction. This analysis is also used in the U.S. federal income tax return preparation process to identify income taxes paid for foreign tax credit identification and documentation and in the income taxes paid disclosure required for the Country-by-Country Report. These already existing annual processes support the preparation of the additional proposed annual income taxes paid disclosure by jurisdiction and the summary by federal (national), state, and foreign taxes.

The proposed interim disclosure of the summary of income taxes paid by federal (national), state, and foreign taxes would require implementation of the same detailed analysis of income tax payable balances by jurisdiction. This detailed work is not currently done, and, unlike the annual report disclosure, there is no other use for this information. Perhaps more importantly, the proposed interim disclosure of income tax payments could be confusing and misleading to investors because of the very diverse local rules for the timing of tax payments across jurisdictions worldwide. The timing of these payments has very little correlation with the tax expense recognized in the same quarter as illustrated by the timing of estimated tax payments in the United States. There are no estimated tax payments due in the first quarter, two payments are due in the second quarter, and one payment is due in each of the third and fourth quarters.

Accordingly, the proposed interim disclosure would be, at best, of marginal usefulness to users of the financial statements. The significant additional burden of implementing this detailed analysis to identify income tax payments by jurisdiction in sufficient detail to report the proposed summary of income tax payments in interim periods far outweighs any benefit derived by the users of the interim financial statements. For these reasons, we urge the FASB to eliminate this proposal.

Private Company Considerations

Question 14. Not addressed; question is directed to investors.

Question 15. Not addressed.

Transition and Effective Date

Question 16. *The proposed amendments would be required to be applied on a retrospective basis. Would the information disclosed by that transition method be decision useful? Please explain why or why not. Is that transition method operable? If not, why not and what transition method would be more appropriate and why?*

To improve comparability and consistency of income tax information disclosed, the proposed amendments would be applied on a retrospective basis. Restating past disclosures is a costly and time-consuming endeavor. Nevertheless, comparability is paramount to financial statement users, including disclosures in the associated notes. Anything less minimizes the FASB's overarching goal of improving the effectiveness of tax disclosure. Accordingly, assuming a sufficient implementation period is provided before the effective date of final amendments, our preference would be to apply the amendments retrospectively and restate prior periods in the year in which the amendments become effective. The implementation period proposed in response to question 17, below, should provide sufficient time to implement final amendments and restate prior periods.

Question 17. *In evaluating the effective date, how much time would be needed to implement the proposed amendments? Should the amount of time needed to implement the proposed amendments by entities other than public business entities be different from the amount of time needed by public business entities? Should early adoption be permitted? Please explain your response.*

Assuming the proposed amendments are finalized by the end of calendar year 2023, TEI recommends implementation for periods beginning after December 31, 2025 to allow sufficient time to develop the additional systems and processes that would facilitate the recast of 2024 and 2025 disclosures for inclusion in 2026 annual reports. Early adoption, however, should be

permitted for organizations able to meet the revised standards on a retrospective basis (see response to Question 10, above).

* * *

TEI appreciates this opportunity to share its membership's views on the Proposed Update. These comments were prepared by TEI's Financial Reporting Committee, whose Chair is Chris Anderson. Patrick Evans, Chief Tax Counsel for TEI, coordinated the preparation of the comments. If you have questions about TEI's comments, please contact Mr. Anderson at cpa@meta.com or Mr. Evans at pevans@tei.org.

Respectfully submitted,
TAX EXECUTIVES INSTITUTE, INC.

Wayne G. Monfries
International President