

September 30, 2016

Russell G. Golden
Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 2016-270

Dear Chairman Golden,

Financial Executives International (FEI) is a leading international organization of more than 10,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives and other senior-level financial executives. The Committee on Taxation (COT) and the Committee on Corporate Reporting (CCR) are technical committees of FEI, which review and respond to research studies, statements, pronouncements, pending legislation, proposals and other documents issued by domestic and international agencies and organizations. COT and CCR member companies actively monitor standard setting activities of the FASB.

This document represents the views of COT and CCR and not necessarily the views of FEI or its members individually.

FEI's COT and CCR are pleased to comment on the FASB's proposed Accounting Standards Update (ASU) on Topic 740, *Disclosure Framework—Changes to the Disclosure Requirements for Income Taxes*. We commend the Board for its efforts to improve the effectiveness of disclosures required by GAAP. Overall, we thought the Exposure Draft was a reasonable attempt to balance user needs against complexity and cost for preparers. However, there are several critical concerns for us and we have several detailed suggestions for improvement. As the Exposure Draft has asked for feedback on 10 questions related to income tax disclosures, we have attempted to address our concerns and provide suggestions in the context of responding to those questions. The COT and CCR responses are as follows:

Question 1: Would the proposed amendments result in more effective, decision-useful information about income taxes? Please explain why or why not. Would the proposed amendments result in the elimination of decision-useful information about income taxes? If yes, please explain why.

Response: The proposals may provide some increase in decision-useful information about income taxes and we agree that the emphasis on disclosing material information is appropriate. The concern is that the income tax area is already subject to extensive disclosure requirements and, these proposals add far more than they remove. The proposed amendments could result in disclosure overload and create more confusion than decision-useful information.

Specifically, because of tax law provisions affecting the required timing of tax payments and the interaction of the varying tax systems adopted by different jurisdictions, including jurisdictions that tax income on a worldwide basis, the distinction between domestic and foreign tax payments would often not provide meaningful decision-useful information and could result in confusion. For example, domestic tax payments could have been reduced by credits for foreign taxes accrued but not paid in the current period as well as by foreign taxes paid in prior periods. As a result, looking at the domestic payments separately could give a misleading indication of future cash flow prospects due to events that are disconnected from current period operations resulting in information that is not decision-useful when compared to the current requirement to provide aggregate payments included within the statement of cash flows. Similarly, the requirement to disclose jurisdictions with significant income tax payments is often not decision-useful as the factors influencing the payment can vary from period to period and jurisdiction to jurisdiction—again resulting in information that is not useful and could be misleading to financial statement users. If this requirement is retained, guidance should be provided for situations where income tax refunds in one or more jurisdictions could result in a large number of countries having payments that are significant compared to the total net worldwide payment.

The requirement to disclose the pre-tax amount of loss carryforwards and the tax effected amounts before valuation allowances (including separate federal, state and foreign amounts disaggregated year-by-year amounts during the first 5 years) provides a very large amount of information that is duplicative (pre-tax and tax-effected amounts) and not particularly useful. The more useful disclosure is the tax-effected amount of the loss carryforwards. The disclosure of separate amounts for the 5 years is also excessive and does not provide additional useful information. If the concern is loss carryforwards that are going to expire in the near future, companies should already have a valuation allowance recorded if they believe it is more likely than not that a portion of the loss carryforwards will not be realized. Further, this information can be very misleading as a state loss carryforward's value will vary considerably depending on the apportionment to the state. For example, the value of state loss carryforwards may be dependent upon apportionment factors in the year utilized, not the year generated. In some states, the loss carryforwards are not apportioned, but instead are deducted from state taxable income and then the result is apportioned. In addition, tax credit carryforwards have no pre-tax amounts; therefore they cannot be disclosed on a pre-tax basis. We would propose that the requirement to disclose the pre-tax amounts be eliminated and both public and private companies disclose the amount of deferred tax asset for loss and credit carryforward (net of valuation allowance). In addition to reducing the required disclosure, the requirement to disclose separately for federal, state and foreign is much more useful when it is reported on a net asset basis rather than the proposal to also report pre-tax amounts. Should the Board decide to retain the proposed requirement to disclose the pre-tax amount of loss carryforwards and the tax effected amounts before valuation allowances, we would ask the Board to clarify the definition of "pre-tax" with respect to the NOL values and we propose aggregating the amount of expirations by group of years, such as 1-5 years, 6-10 years, beyond 10 years, etc.

The requirement related to disclosure of the amount and explanation of valuation allowance recognized or released should be clarified. For many taxpayers, there are numerous tax jurisdictions that may have carryforwards with valuation allowances and those valuation allowances can change due to many factors including changes to the assessment of prior periods, current period losses which increase the valuation allowance with no change in assessment or due to expiration of tax losses resulting in a corresponding reduction in valuation allowance. Attempting to disclose all changes in amount and explanation could be very misleading due to the large number of jurisdictions and potential reasons for change. We believe that the useful information to users is to disclose significant changes to the assessment for prior periods resulting in a recognition or release of valuation allowance. This could be operationalized by requiring that when a change to the opening balance of valuation allowance results in a disclosed effective tax rate reconciling item that the amount and explanation of the change would also be disclosed.

Finally, the disclosure requirement related to legally binding agreements should be clarified, a scope exception discussed below should be provided, and consideration should be given to aligning the disclosure to current SEC disclosure requirements for tax holidays. Current SEC requirements to disclose the effect of tax holidays and the circumstances and expiration would seem to be well understood and could be the required disclosure for any binding tax arrangement not normally available under the tax law of the jurisdiction. In addition, it should be clarified that an agreement with a jurisdiction, such as a private letter ruling or advance pricing agreement (APA), that confirms the expected tax treatment under published law would not be subject to this disclosure. Additional clarification is needed in the circumstance where an entity meets eligibility requirements that are not broadly available and do not require specific agreement between the entity and the government. Some provisions of tax law may be crafted in such a way that only one or very few taxpayers will be eligible yet no specific agreement is required. In addition, the statement that “(u)nder those agreements, the government would determine whether an entity will receive assistance and/or how much assistance an entity will receive even if the entity meets applicable eligibility requirements” is confusing. This statement seems to be in direct conflict with the requirement that the agreements be “legally enforceable”. We would suggest deleting the sentence related to government review as this seems to be an unnecessary qualifier.

With respect to a scope exception on binding agreements, certain preparers have confidentiality restrictions in their government assistance agreements that would preclude the entity from disclosing information required by the amendments in this proposed Update. Following the proposal in the ASU, which requires disclosure of “significant terms and conditions of the legally enforceable agreement”, would cause certain companies to violate country laws and existing contracts in some situations. Accordingly, it is essential for the FASB to provide a reasonable exception for disclosure that is prohibited by foreign governments or existing contracts in order to avoid irreparable harm to investors, efficiency, competition and capital formation. If the FASB does not remove this requirement, or provide a reasonable exception when disclosure is prohibited by foreign law, the FASB will force some companies to either withdraw from certain investment opportunities or violate foreign law with the potential of incurring penalties and being prohibited from further activity in these countries. Either outcome will have a substantial adverse effect on investors, efficiency, competition and capital formation. In order to prevent entities from breaching such agreements, and thereby potentially losing the agreements’ associated benefits, we believe the proposal should include a scope exception for agreements under which such disclosures are legally prohibited. There is an example of such an exception in the recent issuance of GASB 77, Tax Abatement Disclosure, which allows for non-disclosure of specific provisions of an agreement due to legal prohibition of disclosure, and rather permits for only the general nature of the agreement and provisions to be disclosed.

We not only believe there are confidentiality constraints that would legally limit the amount of information able to be disclosed, but there is also significant concern about the impact to entities due to disclosing competitive information.

Question 2: Are the proposed disclosure requirements operable and auditable? If not, which aspects pose operability or auditability issues and why?

Response: Some of the provisions are not operable and auditable. Specifically, the proposed requirements that pose operability and auditability issues are:

In certain circumstances the requirement to show uncertain tax benefits netted against the amount of net operating loss deferred tax asset may not be operable. For example, to the extent an uncertain tax benefit item arises, an entity may be able to elect to adjust another item on the tax return or the uncertain tax benefit may affect an operating loss or a tax credit depending on factors determined during the audit. So while it may be appropriate to classify an uncertain tax position against deferred

taxes, it may not be clear that it would be netted against net operating losses specifically. Similarly, the requirement to disaggregate uncertain tax settlements between cash and non-cash items may prove problematic. While the total change in cash liability (or expected future liability) during the period should be knowable, the portion that is attributable to uncertain tax resolutions compared to other changes (for example, changes to tax elections) may not be knowable. This could result in arbitrary allocations of impact to uncertain tax items. Given the limited value these disclosures may provide financial statement users, the Board should consider eliminating them.

Furthermore, additional clarification is needed for the disclosure of an enacted change in tax law that is probable to have an effect in a future period. Specifically, should financial statement preparers only consider law changes enacted within the current period? What if at the time a law change is enacted, an entity properly assesses a low probability of having an effect in a future period but the entity's facts subsequently change such that it becomes probable the law change enacted in a prior period will have an effect in a future period? What about tax law changes not enacted by legislative bodies? Would judicial rulings or administrative law changes (not "enacted") be outside the scope of this disclosure requirement? Clarity should be provided regarding the application of materiality to this disclosure as there can be numerous foreign and state and local law changes in addition to federal law changes enacted every quarter.

Disclosing an explanation of the circumstances that cause a change in assertion about the indefinite reinvestment of undistributed foreign earnings may not be operable in certain situations. For example there could be a need to repatriate foreign earnings in anticipation of a (yet) unannounced entrance into new markets or shift in business strategy prior to such activities being made publicly known.

Finally, we believe the proposed requirement to disclose the aggregate of cash, cash equivalents, and marketable securities held by foreign subsidiaries needs to be clarified. While the proposal appears intended to provide more transparency into the liquidity of foreign subsidiaries it may not do so for a financial institution whose liquid assets vary significantly from day-to-day as part of normal business operations. In addition, not all foreign subsidiary earnings are designated as indefinitely reinvested; as such, cash in non-indefinitely reinvested entities would be lumped with that of indefinitely reinvested entities and therefore may provide misleading information to financial statement users. The definition of "foreign subsidiary" for purposes of this disclosure requirement should also be clarified as there may be confusion of whether this is meant to include just controlled foreign corporations or if it also includes foreign branches and other disregarded entities. Finally, the term "marketable security" should be defined. In addition, this disclosure, if required, should be included in the footnote for cash, cash equivalents, and marketable securities instead of in the income tax footnote.

Question 3: Would any of the proposed disclosures impose significant incremental costs? If so, please describe the nature and extent of the additional costs.

Response: While the additional required information is generally available to the entity, the information may not be centrally maintained. There would be a cost involved to establish appropriate data collection systems, implement new processes, and assess materiality which could change from period to period and determine how to explain potentially misleading added disclosure. Therefore, we believe the additional required disclosure should be limited, as discussed above, to those that clearly provides decision-useful information.

Question 4: The Board is proposing that reporting entities disclose income taxes paid for any foreign country that is significant to total income taxes paid. The Board also considered requiring disclosure by significant country of income (or loss) from continuing operations before income tax expense (or benefit) and income tax expense (or benefit) from continuing operations but decided that this disclosure would be costly and potentially not beneficial in assessing prospects for cash flows related to income taxes (see paragraph BC22 of this proposed Update). Are there other costs or benefits that the Board should consider regarding these

potential disclosures? Are there other country-level disclosures that the Board should consider that may be more cost beneficial?

Response: We do not believe that other country specific disclosure would be broadly useful and agree that pre-tax income could be difficult to determine and not beneficial in assessing cash flow prospects. To the extent a particular entity relies on particular country specific provisions of tax law, changes to that provision or a company's operations could be significant to the prospects for cash flows related to income taxes. But that entity specific risk should be addressed, to the extent possible, by the proposal related to tax law change disclosure and by information that would be included in risk factor disclosures. Broad country specific disclosure maybe misleading for many enterprises and would contribute to disclosure overload for companies with significant international operations.

Question 5: The Board considered several disclosures on indefinitely reinvested foreign earnings (see paragraphs BC27–BC40 of this proposed Update). Is there other information that the Board should consider regarding these potential disclosures? Are there other disclosures about indefinitely reinvested foreign earnings that would be more cost beneficial?

Response: We do not believe there is other information that would meet these criteria. We believe the Board's proposals would provide information that is available and useful to financial statement users, but do have concerns in situations where the circumstances that caused a change in assertion about the indefinite reinvestment of undistributed foreign earnings are not (yet) publicly disclosed circumstances such as a change in business strategy requiring a significant investment.

Question 6: The proposed amendments would apply to all entities, except for the requirements in paragraphs 740-10-50-6A through 50-6B, 740-10-50-12, and 740-10-50-15A for which entities other than public business entities would be exempt. Do you agree with the exemption for entities other than public business entities? If not, please describe why and which disclosures should be required for entities other than public business entities.

Response: We agree with the above exemptions, except, as noted above, that we believe the information on net operating losses for both public and private companies should be the deferred tax asset, net of applicable valuation allowance, disaggregated, to the extent material, by federal, state and foreign and by groups of years of expiration.

Question 7: Are there any other disclosures that should be required by Topic 740 on the basis of the proposed Concepts Statement or for other reasons? Please explain why.

Response: We agree with the Board's conclusion that other disclosure would not be broadly applicable or provide decision-useful information. Furthermore, additional information could lead to "disclosure overload" and reduce the benefit of current or proposed disclosures.

Question 8: Are there any other disclosure requirements retained following the review of Topic 740 that should be removed on the basis of the proposed Concepts Statement or for other reasons? Please explain why.

Response: We believe that existing disclosure requirements are broadly understood and operationalized by preparers and utilized by financial statement users. Other than 1) the emphasis on material information and 2) the elimination of the requirement for the amount of uncertain taxes reasonably possible to change, both of which we support, we do not believe other existing disclosure requirements should be modified.

Question 9: Should the proposed disclosures be required only for the reporting year in which the requirements are effective and thereafter or should prior periods be restated in the year in which the requirements are effective? Please explain why.

Response: The proposed disclosures should be required only for the reporting year beginning with the effective date of the changes due to the effort to obtain information that may not be readily available before the establishment of data collection systems and implementation of new processes and the minimal expected incremental benefit for financial statement users.

Question 10: 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? If the answer is “yes” to either question, please explain why.

Response: Because the proposed disclosures require a large amount of additional information that may not be centrally available, companies may be required to implement additional systems and processes. Given other required accounting changes in process and the limited usefulness of the proposed tax disclosure in most cases, the requirements should be effective no earlier than years ending more than 2 years after finalization of the disclosure changes. The timing for public and private companies should be the same and while early adoption should be permitted, companies are generally free to provide additional disclosure so particular elements may be included by entities as they determine them to be useful for financial statement users.

Thank you for the opportunity to provide our perspective on FASB’s ASU on *Topic 740, Disclosure Framework — Income Taxes*. Please feel free to respond to Brian Cove, Managing Director, Technical Activities via phone, 973.765.1092, if you have any questions.

Sincerely,

Committee on Taxation
Financial Executives International

Committee on Corporate Reporting
Financial Executives International