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May 30, 2023

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

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

Dear Ms. Salo:

We appreciate the opportunity to comment on the proposed ASU, *Improvements to Income Tax Disclosures.* We support the Board's objective to improve the transparency and decision usefulness of income tax disclosures in the financial statements by focusing on information that is most important to users.

This cover letter describes our key observations and recommendations regarding the proposed Update. Appendix I provides our responses to the questions for respondents, which include additional recommendations for the Board's consideration.

We generally believe that the proposed amendments would result in the disclosure of more transparent and decision-useful information about income taxes. However, we believe the following recommendations would reduce the potential for diversity in practice.

A. Use income (or loss) from continuing operations before income taxes ('pretax income') to calculate the threshold for separate disclosure in the rate reconciliation

Although we acknowledge that this would differ from current SEC rules, we believe the relevance of the information in the rate reconciliation would be improved if the Board required the use of a specified percentage of pretax income as the threshold for disclosing reconciling items in the rate reconciliation (proposed subparagraph 740-10-50-12A(b)). Ideally the Board and SEC staff would also coordinate to establish a single approach in US GAAP and SEC rules.

We believe the proposal to use pretax income multiplied by the applicable statutory federal (national) income tax rate of the jurisdiction of domicile ('expected tax') in calculating the threshold creates an inherent inconsistency in the disclosure across reporting entities in different jurisdictions. Consider the following examples, which use the threshold in the proposed amendments (i.e. 5% of expected tax, assuming the expected tax rate has to be the statutory federal (national) tax rate ('statutory tax rate') in the jurisdiction of domicile, as explained further in our next key observation). In each example, the reporting entity's pretax income is $1 million and each reporting entity has significant operations in the US.

Example	Reporting entity's jurisdiction of domicile	Statutory tax rate	Disclose reconciling items greater than or equal to	
			% of pretax income	Amount
1	Brazil	34.0%	1.7% (34.0% × 5%)	$17,000
2	US	21.0%	1.05% (21.0% × 5%)	$10,500
3	Switzerland	8.5%	0.425% (8.5% × 5%)	$4,250
4	Bermuda	0.0%	0.0% (0.0% × 5%)	$0

Using a specified percentage of pretax income instead of expected tax as the threshold would scale the threshold based only on the size of the reporting entity's pretax income and not also the statutory tax rate in the jurisdiction of domicile, which can vary widely across jurisdictions. For example, if the threshold is 1% of pretax income, each of the entities above would disclose reconciling items greater than $10,000; or if the threshold is 2% of pretax income, each of the entities above would disclose reconciling items greater than $20,000.

In addition, when the threshold is based on a specified percentage of expected tax, it fluctuates with a change in the statutory tax rate. For example, over the last 50 years, the US statutory tax rate has changed from a high of 48% (which results in a threshold of 2.4% of pretax income) to a low of 21% (which results in a threshold of 1.05% of pretax income). Under the proposed Update, each change in the statutory tax rate would change the threshold for disclosure and negatively affect year-over-year comparability.

Using a specified percentage of pretax income as the threshold would also eliminate the need to potentially use a rate other than the statutory tax rate to calculate the threshold when there is no, or a minimal, statutory tax rate in the jurisdiction of domicile. Currently and as proposed in the Codification amendments, despite the possibility raised in paragraph BC21 as discussed further in our next observation, these entities would disclose all reconciling items in the rate reconciliation because the calculated threshold is 0% (i.e. 0% × 5%). Instead, using pretax income as the basis would allow the entity to calculate a threshold consistent with its peers domiciled in another jurisdiction and would eliminate the need to use an individually-determined higher tax rate as offered in paragraph BC21.

B. Clarify whether the expected tax rate used in the rate reconciliation should always be the statutory tax rate in the jurisdiction of domicile

The proposed amendments in paragraph 740-10-50-12 would require an entity to use the statutory tax rate in the jurisdiction of domicile for the expected tax rate. In contrast, paragraph BC21 states that entities may use "a higher federal or national tax rate for purposes of preparing the rate reconciliation to provide more relevant and meaningful information" when "an entity is domiciled in a jurisdiction with no or minimal statutory tax rates but has significant business activities in other jurisdictions with higher statutory tax rates." We believe paragraph BC21 conflicts with the proposed amendments in paragraph 740-10-50-12. Therefore, we recommend the Board revise

paragraph BC21 to indicate that the expected tax rate should always be the statutory tax rate in the jurisdiction of domicile.

We observe that, in practice, entities domiciled in a jurisdiction with a zero statutory tax rate that have significant business activities in other jurisdictions with higher statutory tax rates often use a rate other than zero because SEC Rule 4-08(h)(2) of Regulation S-X states: "Where the reporting person is a foreign entity, the income tax rate in that person's country of domicile should *normally* be used…" [emphasis added]. We recommend that the Board coordinate with the SEC staff to determine the best approach to align the guidance in Topic 740 and Regulation S-X to reduce diversity in practice.

If use of the statutory tax rate in the jurisdiction of domicile as the expected tax rate would always be required (as reflected in the proposed amendments to paragraph 740-10-50-12), we observe this would result in a change in practice for certain non-US entities.

If an entity could use a rate other than the statutory tax rate in the jurisdiction of domicile (as currently indicated in paragraph BC21), we recommend that the Board clarify the proposed amendments to paragraph 740-10-50-12 to address when it would be appropriate to use a different rate and what principles would be applied in determining that rate. We observe that there is currently diversity in practice in how the guidance referred to in Rule 4-08(h)(2) of Regulation S-X is applied across entities domiciled in a jurisdiction with a zero statutory tax rate with significant business activities in other jurisdictions with higher statutory tax rates. This diversity in practice is because the rule uses the term 'normally' but does not provide related guidance. Providing guidance for determining the rate that could be used instead of a zero statutory tax rate would reduce diversity in practice and improve comparability.

In addition, if an entity could use a rate other than the statutory tax rate in the jurisdiction of domicile, it is unclear how the terminology 'domestic' and 'jurisdiction of domicile' would be applied to other proposed disclosure requirements, such as disaggregated pretax income and disaggregated income tax expense (or benefit) from continuing operations, disaggregated income taxes paid and the categorization of reconciling items in the rate reconciliation.

C. Provide the definition and characteristics of cross-border tax laws

In the Codification amendments, we recommend that the Board:

- define cross-border tax laws (using the language from paragraph BC18) as "incremental income taxes imposed by the jurisdiction (country) of domicile on income earned abroad or on income earned by affiliates in other jurisdictions"; and
- provide characteristics of cross-border tax laws.

While proposed paragraph 740-10-55-231 and paragraph BC18 list certain items that could be included in the effect of cross-border tax laws category (e.g. GILTI, BEAT, FDII) of the rate reconciliation, it is unclear what characteristics make those items cross-border tax laws. For example, we observe that some believe BEAT is similar to an alternative minimum tax and FDII is similar to a special deduction, which would result in these items being categorized as other

adjustments and disclosed only if they meet the threshold. Without additional guidance, we believe differences in interpretation will cause diversity in practice as entities determine whether current and future tax laws should be considered cross-border tax laws.

In addition, we recommend that the Board provide principles in the Codification amendments on how to categorize a withholding tax that is within the scope of Topic 740. Some could interpret the guidance in proposed paragraph 740-10-50-10B and subparagraph 740-10-50-12A(c) as suggesting the categorization should be based on the jurisdiction to which the tax is paid, but others may interpret it as the country of the income recipient.

We also observe that many of the tax laws listed in proposed paragraph 740-10-55-231 and paragraph BC18 that could be included in the effect of cross-border tax laws category include provisions for tax credits. It is unclear whether a tax credit that avoids double taxation (e.g. a foreign tax credit) should be included within the category that provides the credit (e.g. the effect of cross-border tax laws category) or the tax credits category. We recommend that the Board clarify in the Codification amendments that the effect of cross-border tax laws category should be presented net of tax credits, similar to the state and local income tax, net of federal (national) income tax effect category.

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If you have questions about our comments or wish to discuss the matters addressed in this comment letter, please contact Kimber Bascom at kbascom@kpmg.com or Matt Drucker at mdrucker@kpmg.com.

Sincerely,

KPMG LLP

KPMG LLP

Appendix I – Responses to Questions for Respondents

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.

We generally agree with the specific categories proposed by the Board. While there is currently diversity in practice, we believe the proposed specific categories are generally consistent with those currently used by many entities.

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.

As discussed in our cover letter, we recommend that the Board provide additional guidance related to the effect of cross-border tax laws category.

We also recommend that the Board clarify whether the proposed specific categories are required regardless of magnitude. For example, if the nontaxable or nondeductible items category was 4% of expected tax (with no reconciling item greater than 5%), it is unclear whether that category would need to be disclosed.

Additionally, we recommend that the Board clarify whether current year tax positions should be presented in the changes in unrecognized tax benefits category or in the category to which the underlying position relates. For example, if an entity generates a research and experimentation credit in the current period, should the credit be presented:

- net of the unrecognized tax benefit within the tax credits category; or
- gross in the tax credits category based on the tax return to be filed and the related unrecognized tax benefit be presented gross in the changes in unrecognized tax benefits category?

We also recommend that the Board provide guidance as to whether interest, penalties, and domestic federal indirect effects of unrecognized tax benefits should be included in the changes in unrecognized tax benefits category to avoid diversity in practice.

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

As discussed in our cover letter, we recommend that the Board change the threshold to be based on a specified percentage of pretax income. We recommend that the Board adjust the threshold percentage as necessary in relation to pretax income to achieve the disclosure objectives.

In addition, we observe that registrants are currently required to comply with the threshold included in Rule 4-08(h)(2) of Regulation S-X regardless of the US GAAP requirement. We recommend that the Board work with the SEC staff to align the SEC threshold with the forthcoming Codification threshold.

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.

We agree with the qualitative disclosure approach.

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.

We agree with the proposed disclosure.

Question 4:

For investors, would the proposed amendments to the rate reconciliation disclosure result in more transparent and decision-useful information? If so, how would that information help assess income tax risks and opportunities and how would it influence investment and capital allocation decisions? If not, what additional information about rate reconciliation should the Board require?

Not applicable.

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.

Not applicable.

Question 6:

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

As discussed in our cover letter and our response to Question 1b, we believe diversity in practice may develop absent further clarification of the following:

- the definition and characteristics of cross-border tax laws;
- whether the statutory tax rate in the jurisdiction of domicile should always be used as the expected tax rate; and
- the categorization of certain unrecognized tax benefits.

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?

As discussed in our cover letter, we recommend that the Board clarify whether the expected tax rate used should always be the statutory tax rate in the jurisdiction of domicile. If use of the statutory tax rate in the jurisdiction of domicile is not always required, we recommend that the Board provide incremental guidance for entities to apply in determining the tax rate to use instead.

We agree that an entity at or around break-even does not need additional guidance.

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.

While we agree with the Board's decision that only significant changes in the effective tax rate should be disclosed in interim periods, we observe that the proposed disclosure does not fully incorporate the elements involved in annual and interim period tax calculations because they are not comparable. An interim period tax calculation comprises the estimated annual effective tax rate and discrete items. Depending on an entity's profile and the significance of discrete items in either the prior annual period or the current interim period, the rates may not be comparable and understandable under the proposed approach. We recommend that the Board clarify that the interim disclosure should compare a measure of the interim period effective tax rate that includes discrete items to the effective tax rate of the prior annual reporting period.

We also observe that most public business entities present both period-to-date (e.g. quarter-to-date) and year-to-date information. It is unclear whether the interim disclosure should compare period-to-date, year-to-date or both. We recommend that the Board clarify the periods that should be compared in the interim disclosure.

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

We agree with the threshold of equal to or greater than 5% and agree that the disclosed amount of income taxes paid should be net of refunds.

Question 10:

For investors, would the proposed amendments to the income taxes paid disclosure result in more transparent and decision-useful information? If so, how would that information help assess income tax risks and opportunities and how would it influence investment and capital allocation decisions? If not, what additional information about income taxes paid should the Board require?

Not applicable.

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.

Not applicable.

Question 12:

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

We recommend that the Board add a simple example to the Codification that illustrates and clarifies the explanation in paragraph BC31. As written, the "absolute value of total income taxes paid (net of refunds received)" could be interpreted in different ways. For example, if the entity paid 100 of income taxes in Jurisdiction A and received a 20 income tax refund in Jurisdiction B, the denominator for purposes of determining the jurisdictions' net payment or refund that would be disclosed (i.e. the absolute value of total income taxes paid (net of refunds received)) could be interpreted as either:

- $100 + |-20| = 120$; or
- $|(100 + -20)| = 80$.

We also recommend that the Board:

- indicate in proposed paragraphs 740-10-50-22 and 740-270-50-3 that 'federal (national), state, and foreign' have the same meaning as proposed subparagraph 740-10-50-12A(c); and
- expand the example in paragraph 230-10-55-14 to incorporate all the proposed requirements, including changing the "Income taxes" caption to "Income taxes (net of refunds received)", which would be consistent with the caption for "Interest (net of amount capitalized)".

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.

We agree with the proposed frequency.

Private Company Considerations

Question 14:

Would the proposed amendments to the income taxes paid disclosure, the rate reconciliation disclosure for entities other than public business entities, and the disclosure of

pretax income (or loss) and income tax expense (or benefit) provide decision-useful information for private company investors? Please explain why or why not.

We agree with the proposed disclosures for private companies. However, to make the information that would be provided in the proposed disclosures more meaningful to users of the financial statements, we recommend requiring disclosure of the statutory tax rate in the jurisdiction of domicile. We believe disclosing this rate would provide important context for the disclosures otherwise proposed.

Question 15:

Are those proposed amendments for entities other than public business entities clear and operable? Please explain why or why not.

We recommend that the Board clarify whether the disclosures are required for all periods presented.

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?

We agree with the transition guidance in the proposed Update given the availability of historical information.

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.

We believe the proposed amendments can be implemented in a relatively short period of time given the availability of historical information. We also believe that private entities may require additional time to adopt the amendments (we recommend an additional year) and that early adoption should be permitted for all entities.