

Analysis

# Corporate Tax Disclosure Could Be A Matter Of How, Not If

By [Natalie Olivo](#) · August 12, 2020, 5:24 PM EDT

As pressure increases for companies to open their tax affairs to public scrutiny, the question of whether multinational corporations will eventually have to disclose their tax information may become more a matter of what framework they use to do so.

Demands for corporate tax transparency, long associated with civil society groups, have started to [gain traction](#) among certain investors and U.S. lawmakers. While [legislation proposed](#) by congressional Democrats faces uncertainty, [international public reporting standards](#) are set to take effect next year. Although voluntary, the standards come from the Global Reporting Initiative, which provides different reporting frameworks used by nearly three-quarters of the world's 250 largest corporations.

Some specialists are skeptical about whether public tax information will change corporate behavior — and whether companies will properly follow disclosure requirements. At the same time, some businesses willingly open their books to the public, if only to control the narrative.

"Being able to put your own story out there before someone else does it for you is probably more important in tax than many other issues," said Corey Klemmer, director of engagement at Domini Impact Investments LLC. "If someone defines the narrative before you can, explaining what's wrong with it is a losing battle."

## Pressure From Investors

The perceived risks associated with opaque tax practices attracted notice last month when a group of 59 investors, including Domini, urged members of

the [U.S. Senate Banking Committee](#) to support transparency legislation. Introduced in May 2019 by Sen. Chris Van Hollen, D-Md., the Disclosure of Tax Havens and Offshoring Act [would require](#) companies to publicize financial information for each country where they operate.

The investors, which collectively manage more than \$811 billion in assets, said companies' high-risk corporate tax practices can have severe financial consequences. They cited the [Internal Revenue Service's billion-dollar dispute](#) with [Facebook](#) and the [European Commission's](#) order that [Apple](#) pay Ireland €13 billion (\$15.3 billion), a decision that was later [overturned in court](#).

Socially responsible investors have long been concerned about tax issues, but now more mainstream investors are calling for greater transparency, according to Gary Kalman, director of the U.S. office of Transparency International, an anti-corruption nonprofit.

"I don't think there's any danger that investors are going to stop investing in Apple or Facebook," he said. "But I do think they want the information to put into their risk models."

Companies themselves appear to be sensing a change in disclosure expectations.

A 2018 survey from [Deloitte](#) showed that 80% of corporate tax executives believed that public country-by-country reporting will occur over the next few years. In addition, about three-quarters of the executives surveyed said their companies were concerned about "the continuing high interest of media, political and activist groups in corporate taxation."

## **Shifting Attitudes in Congress**

Corporate tax transparency historically hasn't been a focus in the U.S., but several Democratic lawmakers have recently taken up the issue.

In March, 33 members of Congress signed a letter urging the [Organization for Economic Cooperation and Development](#) to require the public disclosure of companies' country-by-country information. Currently, only tax authorities have access to the reports, which include breakdowns of large companies' income, employees and taxes paid by jurisdiction.

The letter's signatories included Rep. Cindy Axne, D-Iowa, who in February introduced companion legislation to Van Hollen's bill.

Axne told Law360 that much of Democratic lawmakers' growing interest in transparency is driven by seeing "how little the average corporation is paying in taxes." She cited a report from the Institute on Taxation and Economic Policy that found large corporations in 2018 paid an effective tax rate of 11.3%, compared with the statutory 21% corporate rate.

In general, the U.S. has lagged behind Europe — especially the U.K. — in terms of tax transparency movements, according to Andrew Belnap, an assistant professor of accounting at the University of Texas at Austin McCombs School of Business. He noted that while the current push for transparency appears to be partisan, "I don't think you were seeing these calls in Congress five years ago."

## **Doubts About Legislation**

Still, there's no guarantee that legislation, if enacted, would result in any meaningful increase in transparency about companies' tax practices.

After the U.K. passed a tax transparency law in 2016, [a report](#) from the Tax Justice Network found that many multinational companies used vague language to describe their tax strategies or did not publicly report information at all.

"It's not a clear argument that you pass this legislation and companies are then instantly shamed and they drastically reduce their aggressive tax planning," said Belnap, who analyzed the companies in the report.

He added, "It's not a slam dunk like a lot of people hope."

Instead of pushing for public tax disclosure, it is worth waiting to see how private reporting will affect corporate behavior in the long term, according to Preetika Joshi, an assistant professor of accounting with the McGill University Desautels Faculty of Management.

Since the OECD issued its reporting guidelines in 2015, "the initial research seems to suggest it's being effective," she said.

As for public reporting, there's no evidence to show that it will have an impact on behavior, she said.

Joshi added that publishing tax information will come at a high cost for companies "when we don't even know what the benefit is."

Meanwhile, Axne noted that "having this information public obviously isn't everything — but knowing what companies are doing will help."

While the current focus in Congress is about providing relief in response to the novel coronavirus pandemic, Axne said she's working on building support for her legislation "so that when we can move this, it's ready to go."

## **The 'Tipping Point' of Global Reporting Standards**

While there's a debate about the potential impact of legislation, companies may end up voluntarily disclosing after the Global Reporting Initiative's reporting standards go into effect next January.

The lawmakers who wrote to the OECD in March said reporting standards should align with the GRI model, noting that the GRI sets standards used by 78% of companies in the Dow Jones Industrial Average.

The GRI's standards cover how companies disclose their economic, environmental and social impacts, according to the organization, which said its tax framework "builds on the aims" of the OECD's country-by-country reporting requirements.

Companies will likely prefer the GRI standard because it's more accessible and understandable than the OECD's reporting system, according to Kalman at Transparency International. The GRI framework gives companies more ability to put their numbers in context and "encourages explanations that are not vague and vacuous," he said.

Kalman added that five years from now, "we're going to look back and say, 'That was the tipping point.'"

The GRI standards also appear to be structured to ensure the information is correct, according to Anh Persson, an assistant professor of accounting at the University of Illinois at Urbana-Champaign Gies College of Business. She noted that companies would publish information they already shared with tax authorities, and problems could arise if the two data sets contradict each other.

"Hopefully, that kind of pressure would make transparency move forward" among businesses, Persson said.

In terms of when companies disclose, there may be a bit of a "herd mentality" where businesses wait to see what their peers do first, according to Klemmer at Domini.

"Getting any movement on it helps build momentum more broadly," she said.

## **Voluntary Disclosure Decisions**

Some companies have decided not to wait for public reporting requirements and

have voluntarily released their tax information, along with explanations behind the numbers.

[Royal Dutch Shell PLC published data](#) in December on its global operations, including information about its business broken down by workforce, earnings and taxes paid in each country where it operates. Jessica Uhl, Shell's chief financial officer, said at the time that transparency was in part about "explaining why we pay the taxes we pay, and why we are not required to pay taxes in some jurisdictions."

Meanwhile, [Vodafone Group PLC](#), a U.K.-based telecommunications company, has published an annual tax report since 2013. The company did so after it was in the headlines over accusations that it wasn't paying tax around the world, according to Andy Cale, Vodafone's head of financial reporting and tax.

"At the time, we found ourselves being incredibly reactive to those messages that were coming across from members of the public, [nongovernment] organizations and the government," he said, speaking at a conference on the GRI tax standards in January.

Cale noted that Vodafone's subsequent decision to publish its tax information, along with explanations, allowed the company to be "much more proactive and significantly less reactive" and to be clear "about what we pay and why we pay it."

Kalman noted that in Vodafone's case, the media obtained leaked information and the reports led to protests around the U.K.

"It's all about how the information is released," he said. "If it comes out that you were trying to hide something, the stories are going to come off much more as a scandal."

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