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House Passes Corporate Disclosure Package Requiring Country-by-Country Tax Reporting for Multinationals, 215-214

Measure Also Requires New Disclosures on Climate Risks, CEO Pay, Corporate Political Contributions

The House today (Tuesday, June 15) narrowly passed, 215-214, a package of measures (HR 1187) intended to improve corporate governance by requiring a number of new disclosures by public companies. No Republicans supported the bill, while four Democrats voted against. Notably, the package included a measure based on HR 3007, sponsored by Cindy Axne (D-IA), which would direct the SEC to issue regulations requiring larger multinational corporations to publicly disclose country-by-country financial information for each of their subsidiaries, including profits, taxes paid, employees and tangible assets. HR 1187 also includes the following bills that had been approved individually by the House Financial Services Committee earlier this year:

- HR 1187, the ESG Disclosure Simplification Act (Luis Vargas, D-CA), whose bill number was used for the overall package
- HR 1087, the Shareholder Political Transparency Act (Bill Foster, D-IL)
- HR 1188, the Greater Accountability in Pay Act (Nydia Velázquez, D-NY)
- HR 2570, the Climate Risk Disclosure Act (Sean Casten, D-IL)

The Democrats voting no were Henry Cuellar (TX), Lizzie Fletcher (TX), Susie Lee (NV) and Kurt Schrader (ME). Attached with this alert please find PDFs with the legislative text of the combined bill; a section-by-section summary (6 pages), and the White House's statement of policy (SAP) on the bill.

During floor debate, Rep. Axne said, "For decades, we've accepted that publicly traded corporations should regularly provide operating information about their business to the public in the interest of those looking to invest in their company and those whose hard-earned dollars can be included in those investments. But the current disclosure requirements do not adequately cover the realities of the modern world -- and allow corporations to avoid U.S. taxes, offshore U.S. jobs, and underinvest in the workers that keep their companies strong... I look forward to working with my Senate colleagues and SEC Chair [Gary] Gensler to get these requirements updated."

In his floor remarks, Bill Huizenga (R-MI), a senior member of the Financial Services Committee, said, "My Democrat colleagues once again are seeking to hijack our securities laws to push left-wing political and social agendas... Make no mistake: this bill will increase costs on publicly owned companies, discourage companies from going public, and frankly could encourage not only private companies to stay private but even have and entice public companies to go back to being private companies."

White House in Support. In its statement of administration policy on HR 1187, the White House said, “As our Nation builds a more equitable economic future, these measures will help safeguard the financial security of America’s families, businesses and workers from risks including the climate-related financial risks they already face... The Administration supports efforts to account for climate risk in financial services, empower and protect investors, and promote transparency, accountability and equity in corporate governance.”

Senate Prospects. Given Republican opposition, HR 1187 would likely have to surpass a difficult 60-vote threshold in the Senate if considered under regular order. Democrats conceivably could include the country-by-country tax reporting and other disclosures in a 51-vote budget reconciliation bill, but their lack of substantial revenue or spending effects could subject the provisions to being challenged and stripped from such a bill under the “Byrd rule.”

Elements of the Package

- Title V of the bill is based on HR 3007, the *Disclosure of Tax Havens and Offshoring Act*, sponsored by Cindy Axne (D-IA). Under the bill, businesses that are part of larger multinational enterprises would have to publicly disclose the tax jurisdictions where each subsidiary resides for tax purposes, and any other jurisdictions where subsidiaries are organized or incorporated. Companies would also have to disclose aggregate or consolidated financial activities for each tax jurisdiction where a subsidiary resides, including:
 - Revenue generated from transactions with other business units.
 - Profit or loss before income tax.
 - Total income tax paid on a cash basis to all jurisdictions.
 - Total accrued tax expenses recorded on taxable profits or losses.
 - Net book value of tangible assets, excluding cash or cash equivalents, intangibles, and financial assets.

According to the bill text, the “CbC” disclosure requirements would apply to “members of multinational enterprise groups with sufficient annual revenue as determined by the SEC to meet U.S. or international standards for country-by-country reporting.” In the United States, that threshold is \$850 million in annual revenues. Companies would also have to file reports for entities that have no tax jurisdiction of residence. The SEC would have to issue a proposed rule to implement the provisions within one year of the bill’s enactment, and a final rule within 18 months. The requirements would be effective one year after the final rule is issued.

- Title I of the bill is based on HR 1187, the *ESG Disclosure Simplification Act*, sponsored by Luis Vargas (D-CA). The bill would require issuers to disclose certain environmental, social and governance (ESG) metrics to shareholders, the connection between those metrics and the issuer’s long-term business strategy, and the method by which the issuer determines how ESG metrics impact its business strategy. The language also requires SEC to adopt rules requiring issuers to disclose ESG metrics in filings that require audited financial statements. The SEC could incorporate internationally recognized ESG disclosure standards and use a phased approach when applying the requirement to small businesses. The Vargas measure would also establish a permanent Sustainable Financial Advisory Committee to provide the SEC with a report on policy changes that could facilitate sustainable investments. The advisory committee could have as many as 20 members, including representatives of insurers, pension funds, asset managers and other financial institutions.
- Title II of the bill is based on HR 1087, the *Shareholder Political Transparency Act*, sponsored by Bill Foster (D-IL). The House passed a similar measure in the previous Congress. It would require public

companies to submit quarterly reports to both the SEC and investors detailing the amount, date and nature of the company's expenditures for political activities. If the political expenditure was made in support of (or opposition to) a particular candidate, or was made to a trade association, then the company would have to disclose the candidate and/or trade association. The bill also requires public companies to disclose in their annual reports any political expenditures over \$10,000 in the previous year, as well as the nature and amount of any spending the company plans to make in the upcoming year.

- Title III of the bill is based on HR 1188, the *Greater Accountability in Pay Act*, sponsored by Nydia Velázquez (D-NY). The measure would require most public companies to disclose annually certain employee pay raise information, including pay raises for executive employees and non-executive employees. It also requires companies to compare executive and non-executive pay increases with each other and the Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers. "Emerging growth companies," which are exempt from certain securities rules, would be exempt from the requirement. The Financial Services Committee's report on the bill cited a *Wall Street Journal* analysis that found the median pay for CEOs at more than 300 of the largest U.S. public companies was \$13.7 million in 2020.
- Title IV of the bill is based on HR 2570, the *Climate Risk Disclosure Act*, sponsored by Sean Casten (D-IL). The bill would require public companies to annually disclose information relating to the financial and business risks associated with climate change. The bill also requires the SEC to establish, in consultation with other financial regulators, climate-related risk disclosure metrics and guidance, which will be industry-specific and require companies to make both quantitative and qualitative disclosures. The companion bill in the Senate (S. 1217) is sponsored by Sen. Elizabeth Warren (D-MA). The disclosures would cover:
 - Physical risks to fixed assets, locations, operations and value chains resulting from climate change, such as increased temperatures, extreme weather and flooding.
 - "Transition risks" from efforts to reduce greenhouse gas emissions and increase resilience to climate change, including costs related to government policies and treaties, new technologies, changing markets and litigation.
 - Corporate governance processes and strategies to identify and manage climate risks.
 - Specific actions a company is taking to mitigate identified risks.

The disclosure rules developed by the SEC, within two years of enactment, would have to be specialized for the finance, insurance, transportation, electric power, mining and non-renewable energy industries. They would have to incorporate social costs attributable to greenhouse gas emissions, using (at a minimum) a process developed by the Obama administration to estimate monetized damages associated with an incremental increase in CO2 emissions in a given year. Public companies involved in developing fossil fuels would have to disclose estimates of specific greenhouse gas emissions, as well as fossil fuel reserves and freshwater use.

Amendments. Among the amendments offered on the floor, the House:

- Adopted, 215-211, a package of amendments that were considered en bloc, consisting of individual amendments offered by:
 - Rep. Axne, increasing disclosures from public companies about their workforce, including information about workforce health and safety, pay, diversity, turnover and promotion rates, and training, as well as companies' use of contractors and outsourcing.

- Lois Frankel (D-FL), requiring publicly traded companies to disclose the number of settlements, judgments, and aggregate settlement amounts in connection with workplace harassment in their annual SEC filings.
 - Jim Himes (D-CT), requiring publicly traded companies to report annually on whether members of their governing bodies (such as general partners or members of a board of directors) have cybersecurity expertise and the nature of that experience. If nobody has such experience, the company would be required to describe what other aspects of its cybersecurity were considered by the people responsible for identifying and evaluating nominees for governing body membership with the National Institute of Standards.
 - Gregory Meeks (D-NY), requiring public companies to annually disclose the voluntarily self-disclosed racial, ethnic, gender identity, sexual orientation and veteran status of their board directors, nominees and senior executive officers. The Meeks amendment also empowers the SEC's Office of Minority and Women Inclusion to publish best diversity disclosure practices, and creates an advisory group that would study and report on increasing corporate diversity.
 - Dean Phillips (D-MN), requiring the SEC to study the emergence and viability of coalitions among shareholders who wish to preserve and promote critical employment, environmental, social and governance standards (EESG) and the significance of shareholder networks. The SEC must issue a report to Congress on its findings, with guidance on shareholder engagement activities that do not involve questions of corporate control, and recommendations on regulatory safe harbors for engagement with respect to sustainability guardrails.
 - Jennifer Wexton (D-VA), directing the SEC to issue rules requiring U.S. public companies to annually disclose imports of manufactured goods and materials that originate in or are sourced in part from Xinjiang Province.
- Adopted, 380-47, an amendment by Kim Schrier (D-WA) requiring the SEC, in conjunction with the Office of the Advocate for Small Business Capital Formation and the Office of the Investor Advocate, to conduct a study and issue a report on the issues small businesses face in reporting ESG disclosures.
 - Rejected, 218-209, an amendment by Michael Burgess (R-TX) that would have required publicly traded companies to disclose the negative impacts of federal corporate tax increases.
 - Rejected, 225-204, an amendment by French Hill (R-AR) that would have struck the underlying legislation and replaced it with a study to be conducted by the SEC to summarize and describe any inconsistencies among different ESG and climate disclosure frameworks before requiring new disclosures.

Stacey Plaskett (D-VI) withdrew an amendment to the package's country-by-country tax reporting language that would have clarified that a "tax jurisdiction" includes a country or jurisdiction that is not a country but has fiscal autonomy.

If you have questions, please contact Will Heyniger or Bob Schellhas at (202) 293-7474 or wcey@ey.com.

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