Disclosure of Tax Havens and Offshoring Act

The problem: Tax haven abuse and tax incentives for offshoring
Corporations use a variety of accounting maneuvers to shift profits into tax haven countries, to avoid taxes in the countries where they operate. For example, profitable U.S. corporations booked $105 billion of profits in Bermuda in 2018, despite having only 655 employees there.[1] In 2016 and 2017, prior to the 2017 tax law, profitable U.S. corporations booked $33 billion and $35 billion of profits in Bermuda, respectively.

Even worse, the 2017 tax law created new tax incentives that encourage U.S. companies to move jobs and investment overseas. The law created a global minimum tax on foreign profits, known as Global Intangible Low-Taxed Income (GILTI). But since the tax is not imposed on a country-by-country basis, corporations can avoid this minimum tax by shifting investment into countries where they have actual operations, because the resulting increase in foreign tangible assets and foreign tax payments both offset the GILTI tax they would otherwise owe from their use of foreign tax havens.[2]

Country-by-country reporting: A key complement to President Biden's Made in America Tax Plan
President Joe Biden's Made in America Tax Plan proposes a country-by-country minimum tax on foreign profits, which would eliminate incentives created by the 2017 tax law that encourage U.S. companies to move jobs and investment overseas. The *Disclosure of Tax Havens and Offshoring Act* complements this key tax reform by directing the U.S. Securities and Exchange Commission (SEC) to mandate public disclosure of country-by-country financial reports by large corporations. These reports would include basic information from a corporation on each of their subsidiaries, and country-by-country financial information that sums together all of their subsidiaries in each country – including profits, taxes, employees, and tangible assets.

Country-by-country financial reports are vital information for investors to understand the tax structures and potential risks of the corporations in which they invest, especially in light of recent and potential future changes to international corporate tax law. When a corporation sends jobs overseas, their country-by-country financial report would show the extent to which the U.S. tax system is rewarding their behavior.

This legislation would codify and advance global trends supporting country-by-country reporting. Corporations with annual revenues above $850 million already report all of this information to the IRS under an international OECD framework, but these reports are not public.[3] The IRS releases only aggregate data, including the data on total U.S. corporate profits in Bermuda, and public disclosure of these reports would show which corporations are responsible for this pattern of tax avoidance.

The bill directs the SEC to conform its regulations to existing standards for country-by-country reporting, so this would not impose new recordkeeping burdens. Much of the legislative text comes from the country-by-country regulations promulgated by the IRS.

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[1] Under current law, country-by-country reports for each corporation are not publicly available, but the IRS publishes aggregate data from these country-by-country reports here: https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report.
[2] A brief explanation of this problem is available here: https://www.taxpolicycenter.org/taxvox/current-tax-reform-bills-could-encourage-us-jobs-factories-and-profits-shift-overseas
[3] Corporations currently file their country-by-country reports on Schedule A of Form 8975: https://www.irs.gov/pub/irs-pdf/f8975sa.pdf.