

118TH CONGRESS
1ST SESSION

S. 638

To amend the Securities Act of 1934 to require country-by-country reporting.

IN THE SENATE OF THE UNITED STATES

MARCH 2, 2023

Mr. VAN HOLLEN (for himself, Mr. DURBIN, Mr. SANDERS, Mr. WHITEHOUSE, Ms. SMITH, Ms. KLOBUCHAR, Mr. CASEY, Mr. BLUMENTHAL, Ms. BALDWIN, Ms. DUCKWORTH, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Act of 1934 to require country-by-country reporting.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Disclosure of Tax Ha-
5 vens and Offshoring Act”.

6 **SEC. 2. COUNTRY-BY-COUNTRY REPORTING.**

7 (a) COUNTRY-BY-COUNTRY REPORTING.—Section 13
8 of the Securities Exchange Act of 1934 (15 U.S.C. 78m)
9 is amended by adding at the end the following:

1 “(t) DISCLOSURE OF FINANCIAL PERFORMANCE ON
2 A COUNTRY-BY-COUNTRY BASIS.—

3 “(1) DEFINITIONS.—In this subsection—

4 “(A) the term ‘constituent entity’ means,
5 with respect to a covered issuer, any separate
6 business entity of the covered issuer;

7 “(B) the term ‘covered issuer’ means an
8 issuer that is a member of a multinational en-
9 terprise group that has annual revenue for the
10 preceding calendar year of not less than an
11 amount determined by the Commission to con-
12 form to United States or international stand-
13 ards for country-by-country reporting; and

14 “(C) the term ‘tax jurisdiction’—

15 “(i) means a jurisdiction that—

16 “(I) is not a country; and

17 “(II) has fiscal autonomy; and

18 “(ii) includes a territory or possession
19 of the United States that has fiscal auton-
20 omy.

21 “(2) DISCLOSURE.—

22 “(A) IN GENERAL.—Each covered issuer
23 shall submit to the Commission a report that
24 includes information described in subparagraph
25 (B), and any other information required by the

1 Commission, with respect to the reporting pe-
2 riod described in subparagraph (C).

3 “(B) INFORMATION REQUIRED.—The in-
4 formation described in this subparagraph is as
5 follows:

6 “(i) CONSTITUENT ENTITY INFORMA-
7 TION.—Information on the constituent en-
8 tity, including the following:

9 “(I) The complete legal name of
10 the constituent entity.

11 “(II) The tax jurisdiction, if any,
12 in which the constituent entity is resi-
13 dent for tax purposes.

14 “(III) The tax jurisdiction in
15 which the constituent entity is orga-
16 nized or incorporated (if different
17 from the tax jurisdiction of residence).

18 “(IV) The tax identification num-
19 ber, if any, used for the constituent
20 entity by the tax administration of the
21 jurisdiction of residence of the con-
22 stituent entity.

23 “(V) The main business activity
24 or activities of the constituent entity.

1 “(ii) TAX JURISDICTION.—Informa-
2 tion on each tax jurisdiction in which 1 or
3 more constituent entities is resident, pre-
4 sented as an aggregated or consolidated
5 form of the information for the constituent
6 entities resident in each tax jurisdiction,
7 including the following:

8 “(I) Revenues generated from
9 transactions with other constituent
10 entities.

11 “(II) Revenues not generated
12 from transactions with other con-
13 stituent entities.

14 “(III) Profit or loss before in-
15 come tax.

16 “(IV) Total income tax paid on a
17 cash basis to all tax jurisdictions.

18 “(V) Total accrued tax expense
19 recorded on taxable profits or losses.

20 “(VI) Stated capital.

21 “(VII) Total accumulated earn-
22 ings.

23 “(VIII) Total number of employ-
24 ees on a full-time equivalent basis.

1 “(IX) Net book value of tangible
2 assets, not including cash or cash
3 equivalents, intangibles, or financial
4 assets.

5 “(iii) SPECIAL RULES.—The informa-
6 tion listed in clause (ii) shall be provided,
7 in aggregated or consolidated form, for any
8 constituent entity or entities that have no
9 tax jurisdiction of residence. If a con-
10 stituent entity is an owner of a constituent
11 entity that does not have a jurisdiction of
12 tax residence, then the share of the owner
13 of the revenues and profits of the entity
14 shall be aggregated or consolidated with
15 the information for the tax jurisdiction of
16 residence of the owner.

17 “(C) REPORTING PERIOD.—The reporting
18 period covered by this paragraph is the period
19 of the applicable financial statement of the cov-
20 ered entity prepared for the 12-month period
21 that ends with or within the taxable year of the
22 covered issuer. If the covered issuer does not
23 prepare an annual applicable financial state-
24 ment, the reporting period covered by this para-
25 graph is the 12-month period that ends on the

1 last day of the taxable year of the covered
2 issuer.

3 “(D) FILING DEADLINE.—Each covered
4 issuer shall submit to the Commission a report
5 required under this section on or before the due
6 date (including extensions) for filing the tax re-
7 turn of the covered issuer in the tax jurisdiction
8 in which the multinational enterprise group of
9 the covered issuer is resident.

10 “(E) REGULATIONS.—The Commission
11 shall promulgate regulations carrying out this
12 section that conform to United States or inter-
13 national standards for country-by-country re-
14 porting, including regulations promulgated by
15 the Internal Revenue Service.”.

16 (b) RULEMAKING.—

17 (1) DEADLINES.—The Securities and Exchange
18 Commission (in this section referred to as the “Com-
19 mission”) shall—

20 (A) not later than 270 days after the date
21 of enactment of this Act, issue a proposed rule
22 to carry out this section and the amendments
23 made by this section; and

24 (B) not later than 1 year after the date of
25 enactment of this Act, issue a final rule to

1 carry out this section and the amendments
2 made by this section.

3 (2) DATA FORMAT.—The information required
4 to be provided under subsection (t) of section 13 of
5 the Securities Exchange Act of 1934, as added by
6 subsection (a) of this section, shall be provided by
7 the issuer in a report in a machine readable format
8 prescribed by the Commission, which shall be made
9 available to the public online, in such machine read-
10 able format as the Commission shall prescribe.

11 (3) EFFECTIVE DATE.—Subsection (t) of sec-
12 tion 13 of the Securities Exchange Act of 1934, as
13 added by subsection (a) of this section, shall take ef-
14 fect on the date that is 1 year after the date on
15 which the Commission issues a final rule under
16 paragraph (1)(B).

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