

SEC Backs Amazon Holders On Global Tax Transparency Vote

By **Kevin Pinner**

Law360 (April 6, 2022, 9:19 PM EDT) -- A Roman Catholic priest told Law360 on Wednesday that he won the U.S. Securities and Exchange Commission's approval for a vote among fellow Amazon.com shareholders on his global tax transparency proposal, bypassing the company's request to block his measure.

The Rev. Séamus Finn told Law360 that **his proposal for a shareholder vote** will be included in materials at the corporation's annual meeting in May, when a landmark vote will take place on whether to force Amazon to publicly disclose tax payments in each country of operation. Finn works on policy and investments for the Missionary Oblates of Mary Immaculate — a 200-year-old congregation based in Aix-en-Provence, France — whose attorney Con Hitchcock said the SEC's denial of Amazon's no-action request is a watershed moment in tax transparency.



An Amazon shareholder told Law360 on Wednesday that U.S. Securities and Exchange Commission is backing a global tax transparency proposal, bypassing the company's request to block the vote alongside fellow Amazon shareholders. (AP Photo/Eduardo Munoz Alvarez)

"This is the first time that the SEC has allowed a tax-related proposal to be voted by a company's shareholders," Hitchcock, principal at Hitchcock Law Firm in Washington, D.C., told Law360.

Finn's proposal — which investors with \$3.6 trillion in assets under management wrote to the SEC Chair Gary Gensler in March to support — would compel Amazon.com to **follow rules** for comprehensive tax disclosure at the country-by-country level: the global reporting initiative, or GRI, tax standard. More than 100 institutional investors voiced support for the shareholder proposal to the SEC "and its request for greater tax transparency" in a news release shared with Law360 by Katie Hepworth at Pensions & Investment Research Consultants Ltd., a corporate advisory firm.

"AkademikerPension and the Ethos Foundation have pre-declared their intention to vote in favor of the shareholder proposal," said the release, published Wednesday. AkademikerPension is one of Denmark's largest pension funds, and the Ethos Foundation comprises 237 Swiss pension funds and public utility foundations.

Ryan Gurule, policy director of Financial Accountability and Corporate Transparency Coalition, told Law360 that the Internal Revenue Service has required taxpayers like Amazon to report on a similar country-by-country basis in connection with an Organization for Economic Cooperation and Development agreement, but the public isn't privy to this key information for investors.

The SEC on Tuesday denied Amazon's request to block the vote on the proposal intended to shed light on its tax structure.

"In our view, the proposal transcends ordinary business matters," the SEC said.

Amazon in January had asked the SEC's permission to take no action on the proposal submitted Nov. 15. The company said Rule 14a-88(i)(7) of the [Securities Exchange Act of 1934](#) permits blocking proposals on "ordinary business operations" from a shareholder vote using a so-called no action request.

"I've been at this about 40 years," said Finn, who is 72. His petitions to force a vote on tax transparency at shareholder meetings "always stumble when it comes to how big the umbrella on 'ordinary business' is and what the SEC is going to let fit under 'significant social policy issues.'"

The SEC and its staff have developed an exception to the "ordinary business" basis for exclusion if the proposal also presents a "significant social policy issue" for consideration, but **experts have said** seemingly similar proposals have sometimes yielded opposite responses.

Finn, the Oblates and their allies are "convinced one of the ways" to fund public investment is that "corporations are supposed to pay their fair share," he said.

"This is the first shareholder proposal of its kind, and it's also the first time that the SEC has ruled in this way," Gurule, who also works as a consultant on corporate tax policy for the Center on Budget and Policy Priorities, told Law360. "Right now, large multinational corporations might be reporting this information to tax authorities, but that reporting is inherently limited."

Tax authorities use country-by-country tax data "to audit against current law" but "this information is not used, necessarily, to inform the public debate around whether or not we're taxing multinational corporations correctly," Gurule said. "That's not what the IRS does."

When a public company reports foreign tax liabilities for investors, "there's no strict requirement [they] really disclose that tax information on a detailed or granular basis," Gurule said. For example, he said, a multinational corporation's public tax reporting might lump all of Asia together into one market segment.

"You have no idea if you're earning revenue in Vietnam or China and there might be really different geopolitical risks associated with that," he said, "so investors obviously have a reason to see this information."

Gurule said the SEC has the authority to determine what's included in public **accounting reporting**, but currently defers much of its decision-making on generally accepted accounting principles to the Financial Accounting Standards Board, a private institution he said is meant to function independently.

"In the ultimate irony of timing, [FASB] **just decided** in the last two weeks that it was going to not advance public country-by-country reporting," Gurule said. "FASB **had been considering** whether or not greater disaggregation of, for example, income tax and other reporting was needed for investors to understand" risks concerning where companies pay taxes, he said.

Despite investors with **trillions in assets** writing Gensler to say they **want this information** to help inform investment decisions, FASB then decided not to move forward with the broader reforms.

Large corporations, such as British Petroleum, Royal Dutch Shell and Philips, already use GRI standards to report where they pay taxes across the world, along with where they earn revenue and profits.

After the 2008-2009 financial crisis, Finn said, he began **pressuring corporations** to "pay whatever taxes they're supposed to pay in whatever jurisdictions they're operating" and "contribute to local development wherever they have operations in particular."

Finn said after he finishes spreading the news among investors and reminding them that proxies are due in a couple weeks, the Oblates will file an exempt solicitation with the SEC. Then comes the work of trying to convince other Amazon investors to vote for the proposal.

"Anytime I bring up taxes with my investor friends, it's not an easy topic," Finn said. They typically express concerns about tax transparency eating away at dividend payments, he said, "but I think, slowly, people are beginning to realize" the value in knowing multinational corporations' global tax strategies.

Many investors who already work with the Oblates hold Amazon stock, he said, "so we'll reach out to all of those, then make the case, I think, with some of the proxy-voting people," Finn said. This would include representatives from BlackRock, Fidelity and Vanguard "if we can get some direct access," he said.

"Whether it's a pothole, whether it's infrastructure, whether it's public transportation, they're all in just **absolute disaster mode** around the country," he said.

Finn said governments around the world need multinational corporations to contribute more to public projects from which they benefit, such as infrastructure, education and health care. Corporate income tax revenue as a share of gross domestic product has declined in the U.S. from around 7% in 1945 to around 1% in 2019, according to a Tax Policy Center study published last month.

"Annual budgets are being stretched when it comes to all the things the local citizens rely on," Finn said. "So I think it's a tradeoff."

A spokesperson for Amazon declined to comment.

The SEC did not respond to an attempt for comment.

Amazon is represented before the SEC in this matter by Ronald O. Mueller, partner at Gibson Dunn & Crutcher LLP, who did not respond to a request for comment.

--Editing by Neil Cohen.

Correction: A previous version of this story incorrectly stated which standards the IRS uses for country-by-country reporting. The error has been corrected.