

October 17, 2023

Mr. Satya Nadella
Chairman and Chief Executive Officer
Microsoft
One Microsoft Way
Redmond, WA 98052

Dear Mr. Nadella:

I am writing regarding Microsoft's October 11, 2023 Securities and Exchange Commission (SEC) Form 8-K filing, in which the company disclosed that "the [Internal Revenue Service (IRS)] is seeking an additional tax payment of \$28.9 billion plus penalties and interest" to make up for Microsoft's failure to fully pay its taxes from 2004 to 2013.¹ According to a blog post by your company's Corporate Vice President for Worldwide Tax and Customs, "The main disagreement is the way Microsoft allocated profits during this time period among countries and jurisdictions. This is commonly referred to as transfer pricing and the IRS has established regulations that allow companies to use a specific arrangement for transfer pricing, called cost-sharing."²

These are deeply disturbing disclosures, identifying what appears to be an egregious example of corporate tax evasion and misbehavior. They reveal that, for nearly a decade, Microsoft may have systematically underpaid its taxes by billions of dollars – rewarding shareholders and executives,³ while depriving the federal government of revenue needed to pay for health care, environmental protection, national defense, and more – and leaving middle class taxpayers to foot the bill.

The new disclosures also raise new and troubling questions about Microsoft's behavior after the audit began, and its efforts to derail the IRS and its ability to identify corporate tax evaders.

According to a January 2020 report by ProPublica, Microsoft officials were well aware of their questionable behavior: "In one document, a Microsoft senior executive celebrated the company's

¹ Microsoft, U.S. Securities and Exchange Commission Form 8-K, October 11, 2023, <https://microsoft.gcs-web.com/node/31951/html>.

² Microsoft, "An update on our IRS tax audit," Daniel Goff, October 11, 2023, <https://blogs.microsoft.com/on-the-issues/2023/10/11/update-irs-audit/>.

³ See, e.g., Microsoft, Cash Returned to Shareholders, 2023, <https://www.microsoft.com/en-us/Investor/earnings/trended/cash-returned.aspx>.

‘pure tax play.’ In another, KPMG plotted how to make the company Microsoft created to own the Puerto Rico factory — and a portion of Microsoft’s profits — seem ‘real.’”⁴

But the fact that Microsoft executives were well aware of this questionable tax avoidance did not stop Microsoft from attempting to derail the IRS activity. According to ProPublica, after the IRS opened its audit:

Microsoft fought back with every tool it could muster. Business organizations, ranging from the U.S. Chamber of Commerce to tech trade groups, rallied, hiring attorneys to jump into the fray on Microsoft’s side in court and making their case to IRS leadership and lawmakers on Capitol Hill. Soon, members of Congress, both Republicans and Democrats, were decrying the IRS’ tactics and introducing legislation to stop the IRS from ever taking similar steps again. ... [T]he blowback was effective. [In 2019], the company’s allies succeeded in changing the law, removing or limiting tools the IRS team had used against the company. The IRS, meanwhile, has become notably less bold. Drained of resources by years of punishing budget cuts, the agency has largely retreated from challenging the largest corporations.⁵

Last year, Democrats in Congress and the Biden Administration passed the *Inflation Reduction Act*,⁶ making an important breakthrough to prevent these kinds of tax evasion schemes by providing the IRS with billions of dollars of new funding to go after corporate tax evaders and establishing a new Corporate Alternative Minimum Tax – key steps in making sure that Microsoft and other massive corporations can no longer game the tax system.

But you owe Congress and the public an explanation for your actions, particularly given reports that Microsoft intends to appeal and continue fighting the results of the audit, a process that is “likely to take years ... [and] easily stretch into the late 2020s.”⁷ I therefore ask that you provide answers to the following questions:

1. According to Microsoft’s disclosures, the company could potentially owe a tax payment of “\$28.9 billion plus penalties and interest.”⁸
 - a. How much does Microsoft currently estimate it could owe the IRS due to penalties and interest on this \$28.9 billion shortfall?
 - b. Why was this full amount not disclosed to investors? Does Microsoft believe that the penalties and interest will not have a substantive impact on the company’s financial outlook?
 - c. Is Microsoft currently under audit or investigation by the IRS for any transfer pricing tax schemes in place at any time from 2014 to the present?

⁴ ProPublica, “The IRS Decided to Get Tough Against Microsoft. Microsoft Got Tougher.” Paul Kiel January 22, 2020, <https://www.propublica.org/article/the-irs-decided-to-get-tough-against-microsoft-microsoft-got-tougher>.

⁵ *Id.*

⁶ Inflation Reduction Act of 2022, Public Law 117-169.

⁷ ProPublica, “How a Maneuver in Puerto Rico Led to a \$29 Billion Tax Bill for Microsoft,” Paul Kiel, October 13, 2023, <https://www.propublica.org/article/irs-microsoft-audit-back-taxes-puerto-rico-billions>.

⁸ Microsoft, U.S. Securities and Exchange Commission Form 8-K, October 11, 2023, <https://microsoft.gcs-web.com/node/31951/html>.


2. Which corporate executives covered under 17 CFR § 229.402 were aware of the scheme that is currently under audit by the IRS?
 - a. Did any of these executives receive bonuses that were tied in any way (such as bonuses based on after-tax profits) to the taxes avoided under the scheme currently under audit by the IRS?
 - b. If so, will Microsoft seek to claw back any of these bonuses or any other compensation from these individuals?
3. Is Microsoft continuing to lobby Congress or the Administration – either directly or through membership associations or other third parties – for policies that would allow the company to evade paying the full amount of unpaid taxes identified in the IRS audit?
 - a. Since the IRS audit was opened, how much has the company spent on lobbying and other influence tactics in an attempt to end it?
4. According to your company’s Corporate Vice President for Worldwide Tax and Customs, Microsoft “ha[s] changed our corporate structure and practices since the years covered by the audit, and as a result, the issues raised by the IRS are relevant to the past but not to our current practices.”⁹
 - a. When, specifically, did Microsoft change its practices regarding transfer pricing?
 - b. What specific changes were made to your corporate structure and practices?
 - c. Does the company currently engage in transfer pricing tactics of any kind?
5. Reports describe a significant role for accounting firm KPMG in developing and enacting the tax scheme. ProPublica indicated that Microsoft initially chose not to implement the transfer pricing tactic because it was “impractical,” but that the company changed its mind after “KPMG ... made a persuasive pitch.”¹⁰
 - a. At what point did Microsoft begin taking tax advice from KPMG?
 - b. Are the reports accurate that Microsoft chose to use the disputed transfer pricing after “a persuasive pitch” by KPMG?
 - c. Did Microsoft implement all recommendations by KPMG with regard to transfer pricing tactics used between 2004 and 2013? If not, which KPMG recommendations were rejected, and why?
 - d. Does Microsoft have an ongoing relationship with KPMG for consulting services regarding tax practices? If not, when did this relationship end?

⁹ Microsoft, “An update on our IRS tax audit,” Daniel Goff, October 11, 2023, <https://blogs.microsoft.com/on-the-issues/2023/10/11/update-irs-audit/>.

¹⁰ ProPublica, “The IRS Decided to Get Tough Against Microsoft. Microsoft Got Tougher.” Paul Kiel, January 22, 2020, <https://www.propublica.org/article/the-irs-decided-to-get-tough-against-microsoft-microsoft-got-tougher>.

I ask that you provide a written response no later than October 27, 2023.

Sincerely,



Elizabeth Warren
United States Senator