

Congress of the United States
Washington, DC 20515

April 29, 2022

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC

Dear Secretary Yellen:

Thank you for your work during the economic recovery following the COVID-19 pandemic. We write to you about recent final regulations regarding Foreign Tax Credits (FTCs) released by the Treasury Department (“Treasury”) on December 28, 2021.

Few areas of tax policy are more complex than international taxation, and we appreciate the challenges Treasury faced as it worked to finalize the FTC regulations that were proposed during the Trump Administration. Several countries have expanded their claims of taxing jurisdiction, notably through novel digital services taxes. Treasury has worked to respond to those novel claims of taxing jurisdiction in ongoing negotiations at the Organization for Economic Cooperation and Development (OECD) Inclusive Framework’s project to address the tax challenges arising from digitalization. These negotiations haven’t occurred in a vacuum: the global economy is still recovering from the COVID-19 pandemic while also combating the emerging challenge of inflation.

As the Biden Administration develops tax policy impacting U.S.-based multinational corporations, it is crucial for Treasury to keep our global competitiveness at the top of its considerations while we work together to put our economy on the road towards long-term growth and recovery. FTCs play a critical role in the international tax system by preventing double taxation of income that is properly subject to tax in another jurisdiction. Denying credits for foreign taxes that were previously creditable may lead to unintended consequences with compounding effects for U.S. businesses, such as double-taxation or U.S. firms making decisions to offshore intellectual property. While we appreciate Treasury’s role in issuing these final regulations, misaligned U.S. policy could also dissuade investment by U.S. companies in emerging markets where we need to stay competitive with China. We therefore strongly encourage Treasury to continue its engagement with industry to inform its understanding of the potential downstream impacts of FTC-related changes, and to be particularly mindful of how these changes could negatively impact U.S. companies’ competitiveness abroad.

The concerns we’ve heard about the updated FTC guidance are as varied as the industries they impact. However, there are a few common themes. First, we are concerned about the potential impact these new regulations will have on U.S. companies operating in foreign countries with no U.S. tax treaty in place, particularly in the context of how these companies domicile intellectual property or are affected by withholding tax. We are encouraged to hear Treasury has engaged

with industry on this issue, and we urge you to work with the impacted businesses to ensure a productive outcome.

Second, as companies begin implementing this new FTC guidance, it will be critically important for the Internal Revenue Service (IRS) to provide comprehensive administrative guidance on applying the regulations. We appreciate the guidance IRS has provided thus far. Given the broad application of the regulations to taxes worldwide, taxpayers must conduct rigorous analysis to understand how these regulations affect, and ultimately guide their decisions on claiming these credits. We hope Treasury and the IRS will engage in a productive dialogue with taxpayers about how any new standards apply in order to resolve any unintended ambiguity and help taxpayers arrive at informed conclusions. We also urge Treasury to consider developing some safe harbors to make clear the regulations do not disallow credits for taxes that are clearly imposed on net income attributable to the taxing country. In light of the clear and ongoing challenges taxpayers are facing in compiling their financial earnings statements this quarter, for those elements where Treasury is unable to provide further administrative guidance to clarify the application of these regulations, we respectfully request that Treasury extend the implementation window for the final regulations.

Finally, we ask that Treasury keep Congress fully informed about its work to address outstanding industry questions about the new FTC guidance, and to keep us updated about any forthcoming actions Treasury is undertaking within the FTC rulemaking. The more Treasury and Congress engage with each other, the more we are able to communicate the feedback we hear from stakeholders, the better assistance we can provide our constituents in relaying guidance from Treasury.

We look forward to working together on FTC-related policy to ensure we are all focused on long-term economic growth that protects U.S. companies' competitiveness abroad. Thank you for your attention to this matter.

Sincerely,



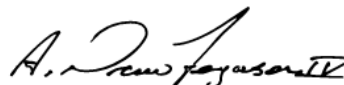
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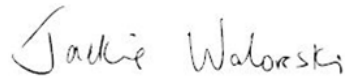
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cc: Lily Batchelder, Assistant Secretary for Tax Policy
Charles P. Rettig, Commissioner of Internal Revenue
William Paul, Chief Counsel (Acting), Internal Revenue Service