



February 28, 2022

**VIA EMAIL**

Ms. Lily Batchelder  
Assistant Secretary (Tax Policy)  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW, Room 3058  
Washington, D.C. 20220  
[Lily.Batchelder@treasury.gov](mailto:Lily.Batchelder@treasury.gov)

Mr. Jose E. Murillo  
Deputy Assistant Secretary for International Tax Affairs  
Office of Tax Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW, Room 3058  
Washington, D.C. 20220  
[Jose.Murillo2@treasury.gov](mailto:Jose.Murillo2@treasury.gov)

Mr. Kevin Nichols  
International Tax Counsel  
Office of International Tax Counsel  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW, Room 3058  
Washington, D.C. 20220  
[kevin.nichols@treasury.gov](mailto:kevin.nichols@treasury.gov)

**Re: Request regarding Final Foreign Tax Credit Regulations**

Dear Ms. Batchelder, and Messrs. Murillo and Nichols:

USCIB is writing to express significant concerns with the final foreign tax credit regulations (T.D. 9959, 87 Fed. Reg. 276) filed in the Federal Register on December 28, 2021 and published on January 4, 2022. We are requesting that Treasury delay the effective date of the regulations by at least one year to enable Treasury and the IRS to mitigate the financial reporting disruption that will arise in the next month when companies will be required to take the final regulations into account on their first quarter 2022 financial statements.

USCIB is a multi-industry US trade association that promotes open markets, competitiveness and innovation, sustainable development, and corporate responsibility, supported by international engagement and prudent regulation. Its members comprise of leading U.S.-based global companies and professional advisory firms from every sector of the US economy, and which

typically have operations in every region of the world. As such, USCIB's members are directly affected by regulations, like the final foreign tax credit regulations, which are likely to create uncertainty, financial reporting disruption and double taxation.

This letter is without prejudice to positions taken in submissions by other trade associations in which USCIB joins. We share the concerns expressed by many commentators that the regulations were finalized without sufficient commentary as required by the Administrative Procedures Act, or may otherwise exceed the scope of Treasury's authority, in either case being subject to challenge as to their validity.

Our immediate concern however relates to the effective date of the regulations and the limited time that companies have to assess the subjective and disparate aspects of the rules so as to be able to publicly report their tax positions for the March 31, 2022 quarter-close. Specifically, we request that Treasury:

- delay the effective date of the final regulations by at least one year,
- further analyze the collateral impact of the regulations on financial reporting and the likelihood of inconsistent positions being taken with respect to creditability, and
- consider the development of a "per-se" list of taxes by country that are creditable or non-creditable to achieve consistency and tax certainty.

### ***Delay the Effective Date by at Least One Year***

The final regulations were filed with the Federal Register on December 28, 2021 and became effective for taxable years beginning on or after that date. As a result, calendar year taxpayers will be required to evaluate the impact of the regulations no later than March 31, 2022 in order to be able to properly report their tax positions on their first-quarter 2022 public filings.

The final regulations departed from the proposed regulations in many material respects particularly with respect to the attribution rules and the requirement that foreign taxes be based on rules similar to the sourcing rules in the Internal Revenue Code. Putting aside the serious question as to whether the final regulations are consistent with the Code, the final regulations will require taxpayers to undertake a country-by-country analysis as to whether a local tax law comports with the new rules.<sup>1</sup>

For the last two months, the tax departments of calendar-year taxpayers have been working to finalize year-end accounts in order to be able to properly report their tax positions on their 2021 year-end public filings. Few, if any, tax departments have the resources necessary to complete

---

<sup>1</sup> While the regulations contain an important exception for taxes covered by income tax treaties entered into by the United States, our members do business throughout the world and pay taxes in many significant non-treaty countries.

their year-end work and at the same time digest the substantial changes included in the final regulations in time to properly report first quarter 2022 results.

### ***Collateral Impact of the Final Regulations***

As finalized, the regulations present significant administrative challenges for Treasury, the IRS and taxpayers given the requirement now to analyze relevant foreign taxes around the world. The accelerated effective date has forced taxpayers and their advisors to scramble to prioritize, research and analyze local country law under the lens of the final regulations. The effect of this “analysis scramble” will inevitably result in inconsistency as taxpayers and their advisors reach different conclusions with respect to how to interpret the new rules in each country. Antitrust and other concerns mean that taxpayers cannot collaborate on this analysis and the eventual inconsistencies will lead to financial reporting distortion.

### ***Per-Se List of Creditable/Non-Creditable Taxes***

Taking additional time to evaluate the collateral impact of the final regulations will give Treasury and the IRS the opportunity to develop a per-se list of creditable or non-creditable taxes in key non-treaty countries and, when necessary, treaty countries as well. Much in the way the IRS has issued rulings in the past with respect to creditability for specific taxes, a per-se list modeled along the lines of the per-se list in the entity classification regulations would provide taxpayer certainty and reduce financial reporting distortion. Treasury and IRS concerns that such a per-se list would require significant government resources, while valid, does not justify burdensome, complex, and ambiguous rule-making that a per se list would help rectify. This process would also enable Treasury and the IRS to evaluate how the final regulations are applied to specific taxes in each country and would eventually lead to more focused and targeted regulations designed to achieve their original intent. This would in turn further minimize the compliance burden of the IRS in future examinations of taxpayers’ compliance with the final regulations. This work would also be helpful in the event that the Congress enacts a per-country foreign tax credit limitation as envisioned in the Build Back Better Act.

Treasury needs to act now to ameliorate the disruption caused by the immediate effective date of the final regulations. We know that Treasury will reflect on the submissions it has received, and will continue to receive, on the final regulations, but there is a pressing need to delay the effective date so that companies can report their first-quarter financial results without the uncertainties caused by the new rules. We ask that Treasury take additional time with the regulations to mitigate the uncertainty and financial distortion that the effective date is creating.

Taking additional time would also give Treasury the opportunity to respond to the comments it is receiving on other substantive aspects of the regulations including the territoriality principles of section 904, mitigation of double taxation and the timing and impact of Pillars One and Two of the OECD Inclusive Framework taxation project.

Best regards,

Timothy McDonald  
Chair, Taxation Committee  
United States Council for International  
Business

Rick Minor  
Vice President & International Tax  
Counsel  
United States Council for International  
Business

**Washington Office**

1400 K Street, N.W., Suite 525  
Washington, DC 20005  
202.371.1316 [tel](tel:202.371.1316)  
202.371.8249 fax  
[www.uscib.org](http://www.uscib.org)

Global Business Leadership as the U.S. Affiliate of:  
International Chamber of Commerce (ICC)  
International Organization of Employers (IOE)  
Business and Industry Advisory Committee (BIAC) to the OECD  
ATA Carnet System