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UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

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VIA EMAIL

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Re: Request regarding Final Foreign Tax Credit Regulations

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

We wanted to thank Jose and Kevin for participating in a call with us on March 9, 2022, to exchange views on substantive issues related to the final foreign tax credit regulations (TD 9959, 87 Fed. Reg. 276) (the "final regulations") following our letter of February 28 (asking to delay the effective date of the final regulations).

Generally, USCIB acknowledges US Treasury's stated objective of the final regulations to clarify the creditability of extraterritorial taxes such as the so-called digital services tax (and similar measures) that a number of foreign jurisdictions have enacted in recent years. We also observe that the final regulations have gone well beyond this objective in a way that creates significant uncertainty and complexity to apply for taxpayers and the IRS. Those sections of the regulations on determining whether a foreign tax is an income tax to introduce new standards of creditability that will likely result in significant double taxation that did not exist before. The risk of double taxation is inevitably significant. The residual cost to US companies of this double taxation will place US business at a competitive disadvantage in the global market compared to their competitors based in other countries and will cause uncertainty with respect to financial statement reporting.

We would like to capture here key points discussed during the call. We believe the final regulations vary materially from prior law in several important respects, including (1) source-based attribution rules for royalties under a new foreign tax law standard of "reasonably similar" to US law, (2) limiting creditability entirely for foreign taxes if IRC section 482 principles are not fully reflected (with a punitive cliff effect), and (3) the "significant costs and expenses" requirement as a new element of the gross receipts, cost recovery analyses.

Our members interpret the final regulations to materially change the foreign tax credit analysis practiced for decades under the Internal Revenue Code. The final regulations include new and novel concepts which create uncertainty and complexity for taxpayers and the IRS. The new standards require expert knowledge of foreign tax law in determining the credibility of foreign taxes in a way that will likely result in US taxpayers denied foreign tax credits for ordinary course transactions, subject to commonly applied taxes, in cases where creditability has long been accepted and understood as an appropriate mechanism to alleviate double taxation. In the absence of a "whitelist/blacklist" approach to classifying a foreign income tax within the final regulations, both taxpayers and IRS auditors will likely have difficulty consistently interpreting such a subjective standard and will both be required to rely on local legal experts in each foreign jurisdiction. These new analyses will also lead to increased, high value tax controversy, given the "all or nothing" nature of the creditability determination.

We also disagree with the assertion that the final regulations represent merely a clarification of current law. We are, however, unable to relate the more restrictive analyses of a foreign tax to any US statutory or case law mandate since the inception of the US foreign tax credit law system. This more restrictive analysis will increase the costs for US companies to invest and do business in developing countries and other foreign jurisdictions, particularly in those cases where a bilateral income tax treaty does not exist (e.g., many Latin American, Middle Eastern, African, and Asian countries where US business faces growing competition). This residual tax cost will put US business at an investment disadvantage to its foreign competitors, e.g., China, and could force US business to withdraw investment from key jurisdictions such as Brazil, by far the largest economy in Latin America, whose corporate income tax could fail the attribution requirement in the final regulations.

USCIB will continue to advocate for a delay in the effective date of at least one year while the uncertainty concerning the final regulations is addressed. We will also engage directly and with other US trade associations to advance measures to close the significant gap between Treasury's public comments and our plain-reading interpretation of the final regulations.

Best regards,

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