

June 3, 2022

The Honorable Janet L. Yellen
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Foreign Tax Credit Final Regulations

Dear Secretary Yellen:

As the chief financial officers of leading American companies, we write to you with serious concerns about the recent Foreign Tax Credit Final Regulations that took effect for calendar year 2022.

The Final Regulations are a radical departure from well-established law. They potentially deny the creditability of many conventional foreign income taxes that have been properly creditable for over a century, including those of major countries that are some of the largest U.S. trading partners.

The inability to credit these taxes will inappropriately result in double taxation of U.S. companies — precisely the economic harm the foreign tax credit is intended to prevent.

This unilateral action puts U.S. companies at a competitive disadvantage with foreign-headquartered companies, allowing foreign companies to grow foreign market share at the expense of goods and services made by U.S. companies and U.S. workers.

Characteristics of the income tax systems of many countries raise uncertainty as to their creditability under the Final Regulations. While the effect of the Final Regulations is widespread, it will be particularly harsh for the operations of U.S. companies in developing countries with which the United States does not have tax treaties, including Brazil and most other South American countries. China is now home to more of the largest multinational companies than any other country in the world and a key investor in these fast growing and strategically important developing countries. As a result, Chinese multinational companies will be the primary beneficiary of the competitive disadvantage imposed by the Final Regulations on U.S. companies operating in these countries.

The additional costs imposed by the Final Regulations will be felt broadly throughout the U.S. economy, not only on our own operations but throughout our U.S. supply chains. In 2019, globally engaged U.S. companies were directly and indirectly responsible for more than 90 million American jobs and 56% of the wages and benefits earned by American private-sector workers.

Further, the uncertainty of whether a tax is creditable or not might only be resolved upon IRS audit, with the possibility of different IRS auditors reaching their own differing conclusions.

The original impetus for these foreign tax credit regulations was the imposition by foreign governments of novel digital service taxes (DSTs) on U.S. companies. However, the scope of the Final Regulations goes far beyond DSTs. For example, foreign withholding taxes for many service payments and royalties are not creditable under the Final Regulations. The inability to claim a tax credit for these withholding taxes provides a tax incentive for U.S. companies to provide services and develop patents and other intellectual property in a foreign country rather than in the United States to avoid double taxation. This could result in the loss of valuable U.S. jobs and harm U.S. workers and their communities.

* * *

Our companies had significant concerns with the 2020 proposed foreign tax credit regulations and had submitted numerous public comments to Treasury and the Internal Revenue Service.¹ Those concerns are only heightened by the Final Regulations.

Changes to longstanding regulatory treatment of such importance and application should not be made absent direction by Congress. This is particularly true in an area where Congress has acted on several occasions without suggesting any such change be made.

We respectfully request that Treasury modify the regulations to address the competitiveness problems they create and issue revised regulations in proposed form that provide an appropriate period for public comment.

Sincerely,



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Executive Vice President & Chief
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Officer
3M Company



Don McGuire
Chief Financial Officer
ADP



Scott Herren
Executive Vice President & Chief
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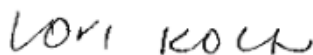
John Murphy
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Howard Ungerleider
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SVP and Chief Financial Officer
General Electric Company

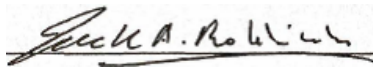


Brian McGee
EVP, CFO and COO
GoPro, Inc.

¹ These include comments on the 2020 proposed regulations submitted by trade associations representing the undersigned companies, including the Alliance for Competitive Taxation, National Association of Manufacturers, National Foreign Trade Council, Securities Industry and Financial Markets Association, Semiconductor Industry Association, Silicon Valley Tax Directors Group, U.S. Chamber of Commerce, and the United States Council for International Business.



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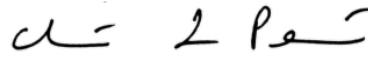
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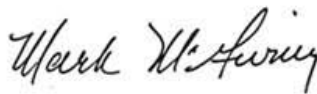
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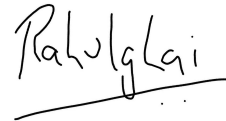
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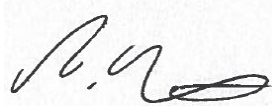
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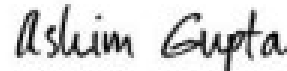
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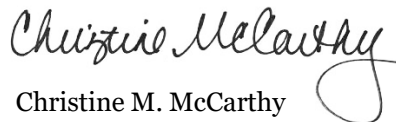
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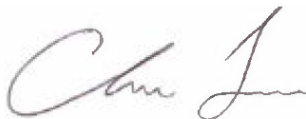
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Chris Turner
Chief Financial Officer
Yum! Brands

cc: Rep. Richard Neal, Chairman of the Ways and Means Committee
Sen. Ron Wyden, Chairman of the Senate Finance Committee
Rep. Kevin Brady, Ranking Member of the Ways and Means Committee
Sen. Mike Crapo, Ranking Member of the Senate Finance Committee