Alliance for Competitive Taxation

Member Companies

3M
Abbott Laboratories
ADP
American Express Company
Bank of America Corp.
The Boeing Company
Boston Scientific Corp.
Carrier Global Corp.
Caterpillar Inc.
Chevron Corporation
Cisco Systems, Inc.
The Coca-Cola Company
Corteva Inc.
Danaher Corporation
Dell Technologies, Inc.
The Dow Chemical Company
DuPont
Eli Lilly and Company
Emerson Electric Co.
Exxon Mobil Corporation
GE Aerospace
GE Vernova Inc.
General Mills Inc.
Google, Inc.
The Home Depot Inc.
Honeywell International Inc.
IBM Corporation
Johnson & Johnson
Johnson Controls, Inc.
JPMorgan Chase & Co.
Kenvue Inc.
Kimberly-Clark
MasterCard Inc.
McCormick & Company, Inc.
Morgan Stanley
Oracle Corporation
Otis Worldwide Corp.
PepsiCo, Inc.
Procter & Gamble Co.
Prudential Financial Inc.
RTX Corporation
S&P Global Inc.
State Street Corporation
Texas Instruments, Inc.
United Parcel Service, Inc.
Verizon Communications Inc.
Walmart Inc.
The Walt Disney Company

April 17, 2025

The Honorable Scott Bessent
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

**Re: February 19th Executive Order, "Ensuring Lawful Governance and Implementing the President's 'Department of Governmental Efficiency' Deregulatory Initiative"**

Dear Mr. Secretary:

The Alliance for Competitive Taxation ("ACT") is a coalition of leading American companies from a wide range of industries that supports a globally competitive corporate tax system.

ACT members support President Trump's leadership in issuing the Executive Order referenced above and other executive orders that address regulatory overreach.[1] ACT believes that the recent Supreme Court decision in *Loper Bright Enterprises v. Raimondo,*[2] together with the recent dramatic increase in the complexity of tax regulations, indicate the time is ripe for a thorough re-examination of the role of regulations in administering and interpreting U.S. tax laws. We look forward to working with you and your staff on this critically important initiative, which we believe will require sustained focus to reorient the current regulatory approach of Treasury and the Internal Revenue Service (IRS).

As a tangible, vital first step in this effort, we respectfully request Treasury take immediate action to address several recent regulations that are clear examples of regulatory overreach. Specifically, we believe that two final regulations: (1) "Rules Regarding Certain Disregarded Payments and Dual Consolidated Losses" (the "DPL Regulations"), and (2) "Certain Partnership Related-Party Basis Adjustment Transactions as Transactions of Interest" (the "RPBA TOI" regulations), each of which was published in the Federal Register on January 14, 2025, should be withdrawn as soon as possible.[3] In addition, the final regulations, "Guidance Related to the Foreign Tax Credit; Clarification of Foreign Derived Intangible Income" (the "FTC Regulations"), which were published in the Federal Register on January 4, 2022, also should be withdrawn without delay.[4]

As explained further below, these regulations cannot be reconciled with the directives contained in President Trump's Executive Order.[5] Leaving these regulations in place will impose enormous administrative burdens on taxpayers and in many situations will result in a loss of tax revenue or otherwise damage the economic interests of the United States. In addition, each of the regulations cited above was issued in final form despite concerns expressed by many commentators, including ACT,[6] that the regulations were inappropriate and unduly burdensome or exceeded Treasury's authority.

*The DPL Regulations*

As noted above, ACT and numerous other groups commented that the proposed DPL regulations[7] exceeded Treasury's rulemaking authority, were a misguided attempt by Treasury to implement certain elements of the OECD's Pillar Two project despite grave congressional objections to the project, and inappropriately penalized companies for reducing their foreign tax liability, notwithstanding that foreign tax reduction by U.S. companies will generally increase U.S. tax revenue.[8] Despite making modest modifications to the details of the DPL rules, Treasury generally rejected these concerns and finalized the DPL regulations largely as they were proposed.

Without restating in detail all of ACT's (and other commenters') objections to the proposed regulations, the Final DPL Regulations continue to reflect Treasury's mistaken belief that the DCL rules of section 1503(d) and other cited provisions of the Internal Revenue Code authorize Treasury to promulgate general "anti-arbitrage" rules to prevent taxpayers from reducing their foreign tax liability without incurring a corresponding increase in U.S. tax liability. No such authority exists, however. As detailed in ACT's comment letter and echoed by other commenters,[9] when Congress has chosen to address issues with respect to possible differences in treatment of an item between U.S. law and foreign law, it has done so specifically and with narrowly tailored grants of authority to Treasury to effectuate the specific rules it has adopted.[10] To ACT's knowledge, apart from these very narrow fact patterns, nowhere in the Internal Revenue Code or the legislative history to any Code provision has Congress expressed the general view that a U.S. company's reduction in *foreign* tax liabilities should be curtailed via Treasury regulation.[11]

In addition, given the profound changes to the U.S. international tax rules in the Tax Cuts and Jobs Act ("TCJA"), ACT believes that the policy concerns that led Congress to enact the DCL rules have much less relevance today than when Congress first considered these issues nearly 30 years ago. Accordingly, any expansion to the DCL rules or other pre-existing U.S. anti-arbitrage concepts should only be undertaken by Congress, in close consultation with Treasury. Specifically, while the preamble to the DPL Regulations refers to Treasury's concerns with respect to "double deduction" and "deduction/no inclusion" scenarios, it is unclear that those terms have any relevance in the case of a U.S.-headquartered group of companies whose worldwide income, following the enactment of the TCJA, is generally subject to current U.S. tax.

From a U.S. tax perspective, a member of a U.S.-headquartered group of companies that is the recipient of a disregarded payment is not subject to U.S. tax on that payment, but neither is the related foreign payor (whose income is also subject to U.S. tax) permitted to claim a U.S. deduction.[12] Accordingly, before considering the effect of the DPL Regulations, there is no "double deduction" or "deduction/no inclusion" from a U.S. tax perspective. After taking the DPL Regulations into account, the U.S. group is subject to additional U.S. tax on an item of fictitious, "deemed" income, resulting in the imposition of U.S. tax on more than 100% of the group's income. To avoid this outcome, the group must engage in costly and often complex restructuring, very likely resulting in an *increase* in the group's foreign tax liability and a corresponding *decrease* in its U.S. tax liability.

For the reasons discussed above, ACT believes that the DPL Regulations should be withdrawn in their entirety. We note that the preamble to the DPL Regulations provides "transitional relief" with respect to potential interactions between the OECD's Pillar Two Rules and the DCL rules.[13] Given President Trump's January 20th Memorandum, "The Organization for Economic Cooperation and Development ("OECD") Global Tax Deal ("Global Tax Deal"), as well as the strong opposition to the current Pillar Two framework expressed by Members of Congress, we respectfully request that Treasury clarify that this transitional relief should remain in place until such time as a solution that is satisfactory to the United States is reached with regard to Pillar Two.

*The RPBA TOI Regulations and Notice 2024-54*

ACT also requests that Treasury withdraw the RPBA TOI Regulations as soon as possible. To ACT's knowledge, the RPBA TOI Regulations are without precedent in the breadth of information requested from taxpayers with respect to ordinary course business transactions occurring over a multi-year period. The regulations require taxpayers to document transactions under the "reportable transaction" regime, which brings significant penalties for noncompliance and which was meant to police marketed tax shelters. When combined with a sweeping definition of the new transactions of interest, however, the RBPA TOI Regulations will result in a massive volume of disclosure regarding completely innocuous partnership transactions. The result will inevitably be counterproductive, burying any information that the government might want to see while also significantly increasing the burden on taxpayers. In effect, the government is creating an unnecessary haystack in which it will be forced to go search for needles (while forcing taxpayers to bear the costs of doing so) when another, more narrowly-tailored, question or information request on the partnership tax return could much more effectively address any IRS concerns.

Further, in many cases, it is simply not possible for partnerships to comply with the regulations, which require disclosure by participating partnerships, participating partners, and material advisors of certain transfers of partnership interests and partnership distributions occurring as far back as 2019. Proper compliance would require a partnership to have information about the relationship between its partners, their basis in their partnership interests, and tax attributes of a partner that would reduce tax paid in connection with certain taxable transactions. As a general matter, such partner-level information is not available to the partnership. Without the information necessary to limit disclosures to just those transactions defined in the RBPA TOI definitions, and considering the significant penalties for noncompliance, partnerships and their advisors will make conservative assumptions about information they do not have and over-disclose to the government, making it more challenging for the government to identify the transactions of interest. The costs in time and money of all this low-value disclosure will be borne, directly or indirectly, by taxpayers.

Disclosures under the RBPA TOI rules are already required in some cases, with additional significant deadlines beginning in July. The faster the implementation of these rules can be stopped or, at a minimum paused, so that Treasury can re-evaluate the rules and appropriately narrow their reach, the greater the avoided detrimental impacts to business and investment.

ACT also requests that Treasury withdraw Notice 2024-54, which announced Treasury's intention to issue future regulations revising the substantive tax rules applicable to related-party basis adjustments in the partnership context. Although Notice 2024-54 is not yet legally binding on taxpayers, the provisions of the Notice would effectively apply retroactively if regulations are issued, requiring taxpayers to redetermine their tax basis (for purposes of measuring cost recovery or gain or loss on sale), including with respect to transactions that occurred years ago.[14] These required retroactive adjustments would apply to a broad range of ordinary course transactions and would thus impose disproportionate burdens on taxpayers.

*The FTC Regulations*

The FTC Regulations represent another significant example of Treasury overreach, so much so that Treasury announced several months after the release of the regulations that it would temporarily suspend the application of some of the most controversial provisions.[15] ACT previously submitted comments on the proposed FTC regulations,[16] the final FTC Regulations,[17] and the subsequently issued proposed regulations[18] that would have modified certain portions of the FTC regulations.

ACT appreciates Treasury's willingness to reconsider the portions of the FTC Regulations that were suspended by Notices 2023-55 and 2023-80. As detailed in our prior comment letters, ACT believes the FTC Regulations as originally released represent the most significant shift in U.S. law and policy with respect to the creditability of foreign taxes in many decades. Policy changes of this magnitude should only be undertaken with a clear mandate from Congress. Despite the lack of any relevant statutory change or specific grant of authority from Congress, however, Treasury nevertheless unilaterally attempted to change the definition of income tax for purposes of section 901 and section 903. These definitions had been unchanged and well understood by both taxpayers and the IRS for many decades, and Treasury's abrupt change led to enormous uncertainty and confusion.

More disturbingly, the FTC Regulations would have caused a material amount of taxes paid on the foreign income of U.S. companies to suddenly become non-creditable, resulting in double taxation of U.S. companies – a tax burden that their foreign competitors would not bear. The FTC Regulations also would have created perverse incentives for U.S. companies to shift activities and jobs from the United States to foreign locations.[19] In addition, under the FTC regulations as finalized, U.S. companies would be incentivized to shift the development and ownership of patents, copyrights, and other intellectual property ("IP") to foreign countries to avoid facing noncreditable taxes on certain cross-border royalty payments. U.S. workers and their communities would inevitably be harmed by the loss of valuable U.S. jobs as a result of these regulations.

Although Treasury's temporary suspension of some of the most controversial portions of the FTC regulations is undoubtedly helpful, ACT believes the FTC Regulations should be withdrawn and reconsidered in totality. The provisions of the FTC Regulations that remain in effect will often result in inappropriate double taxation of foreign income and thereby operate to the detriment of U.S. taxpayers, despite the lack of any Congressional authorization for these changes.[20] In addition, failure to withdraw the regulations in totality would lead to lingering uncertainty regarding whether the temporarily suspended portions of the regulations could be re-applied by Treasury at any time and without notice.[21]

**********

ACT greatly appreciates President Trump's leadership on these matters and your consideration of the issues addressed herein. We would welcome the opportunity to meet with you or your staff as you consider these issues further. In particular, while we have focused in this letter on a small number of recent regulations, we believe that other tax regulations can and should be carefully re-examined under the standards set forth in the President's Executive Order, and we would be happy to engage with the administration on this work to ensure that tax regulations facilitate compliance with the laws enacted by Congress and are consistent with the best interpretation of those laws.[22]

In addition, as noted above, we hope to engage in an ongoing dialogue with your team regarding potential changes in Treasury's approach to tax regulatory guidance more generally. While we believe that action with respect to each of the specific regulations discussed above is urgently needed, we also believe that the regulations discussed herein are only examples of a regulatory approach that is out of balance and increasingly fails to facilitate compliance with the tax laws by taxpayers or the administration of those regulations by the IRS. We look forward to the opportunity to engage further with you and your team on these vitally important matters.

Yours sincerely,

Alliance for Competitive Taxation

cc: The Honorable Kevin Hassett

---

1 *"Executive Order 14215: Ensuring Accountability for All Agencies."* Signed 18 Feb. 2025. *Federal Register, vol. 90, no. 36, 24 Feb. 2025, pp. 10447-10449.*
"Executive Order 14238: Continuing the Reduction of the Federal Bureaucracy." Signed 14 Mar. 2025. *Federal Register*, vol. 90, no. 55, 20 Mar. 2025, pp. 13043-13044.
*"Executive Order 14192: Unleashing Prosperity Through Deregulation*." Signed 31 Jan. 2025. *Federal Register*, vol. 90, no. 25, 6 Feb. 2025, pp. 9065–9067.
"Executive Order 14219: Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative." Signed 19 Feb. 2025. *Federal Register*, vol. 90, no. 37, 25 Feb. 2025, pp. 10583–10585.
"*Regulatory Freeze Pending Review*." Signed 20 Jan. 2025. *Federal Register*, vol. 90, no. 19, 28 Jan. 2025, pp. 8123–8124.

2 *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (holding "courts may not defer to an agency interpretation of the law (i.e., Treasury and IRS regulations) simply because a statute is ambiguous").

3 As discussed further below, ACT also requests that Treasury withdraw Notice 2024-54, which announced that Treasury intended to promulgate future regulations revising the partnership tax rules applicable to related-party basis adjustment transactions.

4 ACT's focus is on the foreign tax credit portion of the FTC Regulations.

5 Section 2 of the Executive Order, "Rescinding Unlawful Regulations and Regulations that Undermine the National Interest" directs agency heads to develop a list of regulations for modification or rescission that, among other criteria, "are based on anything other than the best reading of the underlying statutory authority," as well as regulations that "impose significant costs upon private parties that are not outweighed by public benefits." As discussed further below, each of the regulations described in this letter satisfy one or both of these criteria.

6 ACT submitted multiple letters regarding the foreign tax credit regulations (proposed and final). See, e.g., Alliance for Competitive Taxation, Comments on Proposed Foreign Tax Credit Regulations (Feb. 10, 2021); Alliance for Competitive Taxation, Letter to Secretary Yellen Regarding 2021 Final Foreign Tax Credit Regulations (Jul. 1, 2022). ACT also submitted a comment letter on the proposed regulations addressing DPLs. Alliance for Competitive Taxation, Comments on Proposed Rules Regarding Dual Consolidated Losses and Treatment of Certain Disregarded Payments (NPRM REG-105128-23) (Oct. 7, 2024). Numerous commenters expressed concerns with the proposed partnership basis shifting regulations. See, e.g., American Bar Association Section of Taxation, Letter to the IRS and Treasury (Nov. 15, 2024); New York State Bar Association Tax Section, Letter to the IRS and Treasury, Report No. 1498 (Aug. 16, 2024); American Institute of Certified Public Accountants Letter to the IRS and Treasury (Oct. 3, 2024); National Association of Manufacturers, Letter to Treasury and IRS (Aug. 19, 2024).

7 NPRM REG–105128–23. The proposed regulations addressed certain issues with respect to the dual consolidated loss ("DCL") rules, as well as introduced the new concept of a "disregarded payment loss" ("DPL"). The DCL portions of the regulations generally were not finalized in the final DPL Regulations package. As expressed in ACT's comment letter on the proposed regulations, we believe that most of the remaining portions of the proposed regulations (i.e., those not finalized in the final DPL Regulations) should also be removed to avoid any lingering uncertainty regarding whether those portions will be finalized. For example, the portions of the proposed regulations relating to the treatment of ownership of stock in determining whether a taxpayer has a DCL are in direct conflict with the language of Section 1503(d) and thus exceed Treasury's authority. Further, like the DPL Regulations, this portion of the proposed regulations represents a misguided attempt to align the U.S. tax system more closely with the OECD/G20 BEPS Project's "Pillar Two," which is contrary to President Trump's January 20th memorandum regarding the "Global Tax Deal" and at odds with the repeated objections from members of Congress with respect to U.S. adoption of the Pillar Two rules.

8 In the case of a U.S.-headquartered company with foreign branches or foreign subsidiaries, virtually all of the branches' or subsidiaries' income will be subject to current U.S. tax under the regular U.S. tax rules or under the GILTI regime, in either case with a foreign tax credit allowed to reduce double taxation. Accordingly, if a U.S. company's foreign subsidiaries or foreign branches pay more foreign tax, they will be eligible for more foreign tax credits, which will reduce their residual U.S. tax liability.

9 See, e.g., National Foreign Trade Council Comments on REG-105128-23 (October 7, 2024)

10 See, e.g., Section 1503(d) (the DCL rules), Section 245A(e), and Section 267A. The last two provisions were recently adopted as part of the Tax Cuts and Jobs Act, but each targets very specific fact patterns. Despite Treasury's assertions to the contrary in the preamble to the DPL Regulations, none of these sections provides statutory support for Treasury to adopt general "anti arbitrage" rules outside of the specific parameters of these sections.

11 Indeed, the IRS has long recognized that foreign tax reduction is a *bona fide* business purpose for engaging in a transaction**.** See e.g., Rev. Rul. 89-101, 1989-2 C.B. 67 (Aug. 28, 1989) (reduction to foreign withholding tax was a valid business purpose for a spin-off transaction), Private Letter Ruling 199952029 (Sept. 29, 1999) (reduction of foreign income taxes is a corporate business purpose in context of a spin-off transaction). See also Treas. Reg. § 1.901-2(e)(5) (requiring taxpayers to "reduce, over time, the taxpayer's reasonably expected liability under foreign tax law for foreign income tax" to claim certain foreign tax credits).

12 At the time of their original enactment by Congress, the DCL provisions of section 1503(d) were targeted at structures that effectively permitted the duplicate use of losses, "once against the income of affiliates of a U.S. consolidated group that is subject to U.S. federal income tax (but not foreign tax), and second against the income of affiliates that are subject to foreign tax in a foreign jurisdiction (but not U.S. federal income tax)." S. Rep. No. 99-313, at 393 (1986). Since the introduction of the GILTI regime, there is virtually no income of any U.S.-headquartered company that is not subject to current U.S. tax. Notwithstanding this change in circumstances, Treasury's approach in the DPL Regulations would significantly expand the reach of DCL concepts for U.S.-headquartered companies.

13 Certain Disregarded Payments and Dual Consolidated Loss Regulations, 90 Fed. Reg. 3003, 3012 (Jan. 14, 2025)

14 Section 4 of the Executive Order expressly provides that in evaluating potential new regulations the factors set forth in Section 2(a) of the Executive Order should be considered.

15 After the FTC regulations were released, Treasury released technical amendments to the regulations on July 27, 2022 [87 Fed. Reg. 45018 (July 27, 2022)] and subsequently released proposed amendments to the regulations on November 22, 2022 [87 Fed. Reg. 71204 (Nov. 22, 2022)]. On July 21, 2023, Treasury released Notice 2023-55, IRS Notice 2023-55, 2023-31 I.R.B. 1**,** which suspended some of the most controversial portions of the final regulations effective for taxable years ending on or before December 31, 2023. On December 11, 2023, Treasury released Notice 2023-80, 2023-52 I.R.B. 1243**,** which extended the applicable dates for this relief effective for taxable years ending before the date when a notice or other guidance is issued that withdraws the relief.

16 Prop. Treas. Reg. § 1.901-2, *Regulations Regarding the Foreign Tax Credit*, 85 Fed. Reg. 72078 (Nov. 12, 2020)

17 T.D. 9959, *Final Regulations Regarding the Foreign Tax Credit*, 87 Fed. Reg. 276 (Jan. 4, 2022)

18 Prop. Treas. Reg. §§ 1.901-2, 1.903-1, *Additional Guidance on Foreign Tax Credits*, 87 Fed. Reg. 45200 (July 27, 2022)

19 For example, under the FTC regulations as finalized, U.S. companies will often be unable to credit foreign taxes imposed on payments for services provided from the United States to foreign customers. This will provide a tax incentive for those companies to shift jobs to the local customer markets to avoid double taxation.

20 As one notable example, the FTC Regulations assign income arising from certain branch transactions to foreign tax credit limitation categories by reference to the characterization of the assets of the payor (i.e., the tax book value method). As noted in ACT's prior submission, this approach will frequently result in a mismatch between the FTC "basket" of the foreign taxes paid by the taxpayer and the associated foreign income, resulting in double tax.

21 In this regard, we note that Notice 2023-80, which provides indefinite relief with respect to portions of the FTC regulations, explicitly states that such relief will continue in effect for taxable years that end before Treasury issues revised guidance. This raises the possibility that taxpayers could be exposed to a change in the regulations issued shortly before their current taxable year ends, with retroactive effect back to the beginning of that year (e.g., for calendar year taxpayers, guidance could be issued in December with retroactive effect back to January 1 of that year).

22 We welcome and support Treasury's issuance of Notice 2025-19, which specifically references the Executive Order and invites comments from the public by May 30, 2025, for possible regulatory actions to be considered as part of Treasury's 2025-2026 Priority Guidance Plan. In some cases, we believe the most appropriate action may involve removing portions of previously issued regulatory guidance that imposes undue burdens on taxpayers or exceeds Treasury's authority.