Repealing the Deduction for Foreign-Derived Intangible Income ("FDII") Would Harm the U.S. Economy and U.S. Workers

- Approximately half of the 38 countries in the Organization for Economic Cooperation and Development ("OECD") (including France, Italy, Spain, and the United Kingdom), as well as China and numerous other countries have preferential tax rates ranging from the single digits to as high as 15 percent for certain intellectual property ("IP") income.[1]
- Repealing the deduction for FDII, in combination with the Administration's other fiscal year 2025 budget proposals, would increase the U.S. (federal plus average state) tax rate on IP income to 32.4 percent, higher than in 37 of the other 38 OECD countries, and much higher than in the many countries with IP regimes.
- This would place U.S. companies at a disadvantage relative to their foreign competitors and put the United States even further out of step with international norms.
- Encouraged by the deduction for FDII, many companies repatriated significant amounts of IP from abroad. Nine U.S. technology companies alone reported an additional $60 billion of profits in the United States in 2020 following repatriation of IP after the enactment of the FDII provisions.[2]
    - Gross royalty income of corporations more than doubled from $190 billion in 2017 to $385 billion in 2021,[3] consistent with corporations both repatriating IP and developing new IP in the United States. Rents, royalties, and license fees received from abroad increased from $136 billion in 2017 to $336 billion in 2021 (the most recent year for which data are available).[4]
- Under the OECD global minimum tax ("Pillar Two") Administrative Guidance, qualified domestic minimum top-up tax ("QDMTT") imposed by foreign governments on the IP and other income of U.S. multinationals, comes before the U.S. tax on global intangible low-taxed income ("GILTI"). Consequently, a regime like FDII becomes even more important to retain IP income in the United States to preserve primary taxing rights and protect the U.S. fisc.
    - Adoption abroad of QDMTTs will reduce the ability of the United States to tax foreign income under the GILTI regime.
    - The deduction for FDII incentivizes companies to own IP in the United States, preserving U.S. primary taxing jurisdiction on IP income. The deduction for FDII is thus a U.S. tax base protection measure as it reduces the incentive to hold IP offshore.
- Moreover, FDII incentivizes companies to keep investment and high-value jobs associated with the development, enhancement, management, protection, and exploitation ("DEMPE") of IP (e.g., engineering, research and development, management, and manufacturing jobs) in the United States.[5]

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[1] Source: OECD, Intellectual Property Tax Regimes, 2023.
[2] Martin Sullivan, "Big Tech Is Moving Profit to the United States," *Tax Notes Federal*, August 23, 2021.
[3] Joint Committee on Taxation, Modelling International Tax Proposals at the Joint Committee on Taxation, April 5, 2024. Internal Revenue Service, Statistics of Income, Corporation Income Tax Returns Complete Report, Publication 16.
[4] Internal Revenue Service, Statistics of Income Division, *Corporate Foreign Tax Credit*, October 2024.
[5] The OECD transfer pricing guidelines take DEMPE functions into account in the allocation of taxing rights for IP income.