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Oracle Corporation
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Prudential Financial Inc.
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S&P Global Inc.
State Street Corporation
Texas Instruments, Inc.
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Verizon Communications Inc.
Walmart Inc.
The Walt Disney Company

October 21, 2025

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

Re: Notice 2025-44, Proposed Removal of the Disregarded Payment Loss Rules and Certain Recent Changes to the Dual Consolidated Loss Rules; Extension of Transition Relief

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 the issuance of Notice 2025-44 (the "Notice") by Treasury and the Internal Revenue Service ("IRS"), announcing the intent to issue proposed regulations removing the disregarded payment loss ("DPL") regulations and certain recent changes to the longstanding dual consolidated loss ("DCL") rules. In addition to announcing such intent, the Notice requests comments on certain other aspects of the DCL rules.

Attached are ACT's comments in response to the Notice, which can generally be summarized as requesting Treasury and the IRS to (i) remove the final DPL and DCL regulations issued in January 2025 (the "Final Regulations") in their entirety, along with the remaining portions of the proposed DCL regulations issued in August 2024 (the "Proposed Regulations") that were not finalized in January 2025, (ii) confirm that disregarded payments are not taken into account for DCL purposes, and (iii) revise the all-or-nothing principle and related rules to take into account the unique nature of the OECD Global Anti-base Erosion ("GloBE") rules as a minimum tax regime.

We appreciate your consideration of these comments. ACT members welcome the opportunity to discuss these comments further with your staff.

Yours sincerely,

Alliance for Competitive Taxation

cc: Kenneth Kies, Assistant Secretary (Tax Policy)
Kevin Salinger, Deputy Assistant Secretary, Tax Policy
Rebecca Burch, Deputy Assistant Secretary, International Tax Affairs
Jim Wang, Acting International Tax Counsel
William M. Paul, Principal Deputy Chief Counsel, Internal Revenue Service
Peter Blessing, Associate Chief Counsel (International), Internal Revenue Service

ALLIANCE FOR COMPETITIVE TAXATION COMMENTS ON NOTICE 2025-44, PROPOSED REMOVAL OF THE DISREGARDED PAYMENT LOSS RULES AND CERTAIN RECENT CHANGES TO THE DUAL CONSOLIDATED LOSS RULES; EXTENSION OF TRANSITION RELIEF

I. COMMENTS ON THE JANUARY 2025 FINAL REGULATIONS AND AUGUST 2024 PROPOSED REGULATIONS

a. Remove the January 2025 Final Regulations in Their Entirety

ACT commends Treasury and the IRS for issuing the Notice and declaring their intent to remove the DPL rules. However, ACT believes the anti-avoidance rule[1] included in the Final Regulations should also be removed. This rule applies if "a transaction, series of transactions, plan, or arrangement is engaged in with a view to avoid the purposes of section 1503(d) and the regulations in this part issued under section 1503(d) …"[2] According to the preamble of the Proposed Regulations, transactions potentially within the scope of the anti-avoidance rule include transactions that "may facilitate a double-deduction outcome by manipulating the computation of income or a dual consolidated loss with items that are not included in income, or do not give rise to tax, in the foreign country."[3] While the Final Regulations modify the anti-avoidance rule, the preamble to the Final Regulations specifically reiterates that the modifications are intended "to make clear that the purpose of section 1503(d) and the regulations thereunder is to prevent double deduction and similar outcomes."[4] Treasury and the IRS state in the Notice an intent to provide an exception to the finalized anti-avoidance rule "so that the rule does not apply to structures that would have been addressed by the DPL rules."[5] While ACT commends Treasury and the IRS for acknowledging the anti-avoidance rule in its current form is inappropriately broad, ACT believes the anti-avoidance rule is inconsistent with the plain language of section 1503(d) and its purposes and introduces needless uncertainty to an area of the law that has been stable for decades. Accordingly, ACT believes that the rule should be removed in its entirety.

Notwithstanding Treasury's assertions in the preambles to the Proposed Regulations and the Final Regulations, Section 1503(d) was not enacted by Congress to address "double deduction outcomes." Rather, as the plain language of the statute makes clear, Congress intended to address situations in which a domestic corporation incurs a "net operating loss" in circumstances in which that corporation is subject to an income tax of a foreign country on its income (without regard to source).[6] The anti-avoidance rule would turn a statutory provision that operates on the basis of a domestic corporation's overall tax computation (i.e., does the corporation have a "net operating loss") into an item-by-item analysis of whether an amount that is deductible in a domestic corporation's taxable income computation is also deductible under the laws of a foreign country. There is no support anywhere in the statutory text or legislative history to section 1503(d) for the assertion that Congress intended to address (or empowered Treasury to address) these "double deduction outcomes." Indeed, section 1503(d) does not apply based on whether the deductible items comprising a dual consolidated loss are taken into account under the

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1 Treas. Reg. §1.1503(d)-1(f) (as amended January 14, 2025).

2 Id.

3 89 Fed. Reg., at 64757

4 90 Fed. Reg., at 3012

5 Notice 2025-44 at 3.01.

6 89 Fed. Reg., at 64757; 90 Fed. Reg., at 3012; S. Rep. No. 99-313, at 420 Similarly, the 1988 revisions to the DCL statute, which address "separate business units", only apply in the case of a "loss" of a separate business unit of a domestic corporation.

laws of the relevant foreign country. Existing Treasury regulations have long recognized this fact by providing, "[t]he fact that a particular item taken into account in computing a dual resident corporation's net operating loss is not taken into account in computing income subject to a foreign country's income tax shall not cause such item to be excluded from the calculation of the dual consolidated loss."[7]

The anti-avoidance rule fundamentally rewrites the scope of section 1503(d) by inserting a "purpose" that is wholly without support in the statute or legislative history. ACT respectfully submits that applying a general anti-avoidance rule that is so strikingly inconsistent with the text and purpose of the statutory provision it is attempting to police would be administratively impossible and would result in a significant increase in controversy between taxpayers and the IRS.[8]

Consistent with EO 14219,[9] Treasury should re-examine and, as appropriate, rescind regulations that do not reflect the best reading of the statute, and should de-prioritize enforcement of such rules. While ACT believes the anti-avoidance rule, like the DPL rules, should be removed in its entirety, if Treasury and the IRS insist on retaining the rule in some form, ACT believes that the anti-avoidance rule needs to be fundamentally reconsidered so that it is aligned to the text and purposes of section 1503(d) as articulated by Congress and consistently interpreted by Treasury for decades. To align with those purposes, the touchstone for applying the DCL rules must continue to be whether the dual resident corporation or separate unit has a net operating loss within the meaning of U.S. tax law, without regard to the treatment under foreign law of the particular items that comprise the DCL.

ACT respectfully requests that Treasury withdraw the Final Regulations, including §1.1503(d)-1(f), in their entirety or, at a minimum, revise any newly issued DCL regulations to clarify that the anti-avoidance rule does not override the statute's computation rules.

b. Remove the August 2024 Proposed Regulations in their Entirety

The Notice is silent regarding the changes to the DCL rules that were included in the Proposed Regulations but not finalized as part of the Final Regulations. ACT strongly recommends the removal of the remaining portions of the Proposed Regulations. As explained in our October 7, 2024, comment letter,[10] the changes included in the August 2024 proposed regulations would constitute the most dramatic expansion of the DCL rules since their enactment, fundamentally altering taxpayers' and the IRS's longstanding reliance on intricate and time-tested DCL rules and the principles that undergird

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7 Treas. Reg. §1.1503-2(c)(5)(i). We note that these regulations are still in force, resulting in the absurd situation that one portion of Treasury's section 1503(d) regulations requires taxpayers to disregard foreign law treatment of particular items of income and deduction in determining whether the taxpayer has a DCL, while another portion of the same regulations requires taxpayers to take foreign law treatment of such items into account in determining whether the "purpose" of the statute has been circumvented.

8 The discussion above focuses on the more specific language in the anti-avoidance rule regarding "double deduction outcomes." The Final Regulations are even more expansive, however, also purporting to capture "similar outcomes." It is frightening to contemplate how this nebulous concept could be (mis)interpreted by the IRS in audit situations. If an item of income is exempt under both U.S. and foreign law, does that produce a "similar" ("double non-inclusion") outcome? If an item of income is subject to a reduced rate of tax under foreign law and partially sheltered from U.S. tax by a credit (foreign tax credit or general business credit), has the taxpayer achieved a result that is "similar" to a "double deduction" outcome?

9 Exec. Order No. 14,219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, 90 Fed. Reg. 10,583(February 25, 2025)

10 ACT's comments on NPRM REG-105128-23 are available at https://www.actontaxreform.com/news/?cat=letters-comments

them. The regulations that remain proposed would extend the reach of the DCL rules far beyond their intended purpose as expressed by Congress and are not supported by the text of section 1503(d) or its consistent interpretation by Treasury since its enactment.[11]

In particular, ACT believes that the portion of the Proposed Regulations addressing income arising from stock ownership is a radical departure from the long-settled interpretation of section 1503(d) and would expand its scope well beyond what the language of the statute can reasonably support. As noted above, the starting point for the application of the DCL rules as written by Congress is a net operating loss of a domestic corporation or a separate unit of that corporation. There is simply no support in the statute or its legislative history to disregard items of U.S. taxable income in determining whether a corporation has a net operating loss and is therefore within the scope of the DCL rules.[12] Treasury's attempt in the Proposed Regulations to eliminate most income arising from stock ownership in the determination of a DCL is misguided as a policy matter and contrary to both Congressional intent and the plain text of the statute.

ACT respectfully requests that Treasury not finalize any portion of the Proposed Regulations issued in August 2024 and not finalized in January 2025 and, instead, remove such proposed regulations.

II. COMMENTS IN RESPONSE TO REQUEST IN NOTICE

A. Disregarded Payments Should Never Be Considered in Connection with the DCL Rules

The Notice states that Treasury and the IRS are studying whether, and, if so, how disregarded items should be taken into account for purposes of the DCL rules and requests comments from taxpayers on the issue.[13] ACT believes disregarded items should not be taken into account for purposes of the DCL rules. The statutory language in section 1503(d) makes no reference to disregarded payments and instead is focused solely on losses (as determined for U.S. federal income tax purposes) that offset income in both the United States and another jurisdiction. An item of income or deduction that is disregarded under United States tax rules cannot, by definition, affect the U.S. tax computation of a "loss". If Treasury believes that section 1503(d) concepts should apply to disregarded payments, ACT respectfully submits that such a radical change to the DCL rules must come from Congress, which has not amended the DCL rules for nearly 40 years and has not granted Treasury authority to adopt such sweeping changes by regulation.

Further, even if the statutory language allows disregarded payments to be considered, there is no basis for any particular method of doing so. In a parenthetical, the Notice suggests a manner similar to that in §1.904-4(f) for determining foreign branch rules.[14] These rules apply to determine the amount of income

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[11] In response to the request for comments in the Notice, we discuss below the Proposed Regulations' interpretation of the "all or nothing" rule in the context of the OECD's Pillar Two project. In this and several other areas, we believe the Proposed Regulations go beyond the intended purpose of the DCL rules.

[12] In addition, as discussed further below, there is no support in the statute or legislative history of section 1503(d) to "regard" an item of income or deduction that is not otherwise taken into account for U.S. federal income tax purposes.

[13] Notice 2025-44 at section 5.

[14] Although not the subject of this comment letter, ACT believes that the foreign branch rules of 1.904-4(f) are themselves overly complex and unnecessary to implement the statutory provisions and should therefore be revisited by Treasury. ACT addressed this issue in its comments in response to Notice 2025-19, available at https://www.actontaxreform.com/news/?cat=letters-comments.

attributable to a foreign branch for multiple purposes, including for determining foreign tax credit limitations under section 904 and deemed eligible income under section 250. However, the reattribution of income (which is not itself the "regarding" of disregarded payments but instead the recharacterization of an otherwise determined amount of income based on the disregarded payments) under these rules is limited to determining how much of the taxpayer's income is in the foreign branch category. To expand this methodology to regard payments otherwise disregarded for United States tax purposes to determine the amount of a deductible loss would threaten to destabilize the operation of the entity classification rules with no statutory support and no apparent limiting principle.

ACT respectfully requests that Treasury issue no regulation taking into account disregarded payments for purposes of applying the DCL rules.

B. The "All-or-Nothing" Rule in the Proposed DCL Regs

Under the current DCL framework, any "foreign use" of a DCL results in the complete denial of domestic use, rather than a proportional or de minimis adjustment.[15] One proposed expansion of the DCL rules under the Proposed Regulations would extend the application of the DCL rules in the context of the GloBE Rules, potentially resulting in a significant increase of "foreign use" of DCLs. Specifically, the Proposed Regulations include a rule modifying the determination of an "income tax" for purposes of applying the DCL rules.[16] Under this proposed rule, the determination of whether a tax is an income tax would be made without regard to whether the tax is intended to ensure a minimum level of taxation on income or the taxpayer computes income or loss by reference to financial accounting net income or loss.[17] Accordingly, under the proposed definition of an income tax, certain top-up taxes implementing the GloBE Rules (including QDMTTs)[18] would be income taxes for purposes of the DCL rules. Because application of the DCL rules generally turns on whether *any* portion of a deduction or loss is made available under the income tax laws of a foreign country to offset or reduce, *directly or indirectly*, any income or gain under such tax laws,[19] the proposed change to the definition of an "income tax" would result in a significant expansion of the DCL rules. That is, any tax regime with a QDMTT could frequently result in a "foreign use" of a DCL, triggering the rules.

Specifically, under the Proposed Regulations, where a separate unit has a DCL and that separate unit is included in the computation of a QDMTT or the transitional safe harbor, foreign use will occur when an item of deduction that comprises the DCL is taken into account in such GloBE calculations if another entity that is treated as a foreign corporation for U.S. federal income tax purposes is included in the same jurisdictional calculation. As noted in ACT's prior comments on this issue, the GloBE Rules adopt a mandatory jurisdictional blending approach, such that there is no flexibility for taxpayers (either through revisions to their corporate structure or by electing not to share the loss with an affiliated corporation) to exclude the loss of a separate unit from their GloBE computations.

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15 See Treas. Reg. § 1.1503(d)-2, § 1.1503(d)-3 (foreign use) (complete denial upon foreign use); see also § 1.1503(d)-4 (domestic use limitation and SRLY registers).

16 Although not explicitly addressed in this comment letter, additional modifications under the Proposed Regulations are made to the DCL rules to extend application to the GloBE rules. For example, Prop. Treas. Reg. § 1.1503(d)-1(b)(4)(i)(A) and (B) would modify the definition of "separate units" to include taxable presences arising under the GloBE rules that are not currently within the definition of a "separate unit."

17 See Prop. Treas. Reg. § 1.1503(d)-1(b)(6)(ii).

18 ACT recognizes that Treasury is currently in discussions at the OECD to implement the "side by side" agreement reached among the G7 countries in June. Accordingly, this discussion focuses on the application of the "all or nothing" principle in the context of QDMTTs, which we recognize will continue to be applicable to US-headquartered companies under the agreement.

19 Treas. Reg. § 1.1503(d)-3.

As ACT has previously noted, in most cases an item of deduction that comprises a part of a DCL that is taken into account under the GloBE Rules will cause no change in the actual tax liability for the group under the GloBE Rules. This important point was acknowledged by Treasury and the IRS in Notice 2023-80.[20] In effect, Treasury and the IRS recognize that the GloBE Rules are fundamentally different from other foreign tax computations (both because GloBE requires a jurisdictional blending of attributes, without regard to the taxpayer's corporate structure or elections, and because, for most taxpayers in most common fact patterns, there will never be a change in tax liability resulting from the inclusion of the attribute in the GloBE computation).

Nevertheless, under the Proposed Regulations, foreign use would invariably be triggered merely as a result of the item of deduction being taken into account in the GloBE computation, without providing taxpayers with an opportunity to prove that the application of such tax regimes does not have any effect on the taxpayer's liability or otherwise alter any relevant tax computations. In these common situations in which the taxpayer's income has already been taxed at a rate at least equal to the GloBE minimum rate, the GloBE Rules function as a mere verification that sufficient tax has been paid on the taxpayer's income in a foreign jurisdiction. Under the Proposed Regulations, however, this mere verification exercise increases U.S. tax. ACT strongly believes that the policies underlying the DCL rules (as consistently reflected in Treasury guidance adopted prior to the Proposed Regulations) require, at a minimum, that taxpayers be given the opportunity to demonstrate that a top-up tax liability would not arise[21] if the item of deduction was not taken into account in the computation of the GloBE income or loss. In such cases, foreign use should not be considered to occur.[22] While the proposed regulations provide a limited exception to foreign use in the context of the Transitional Country-by-Country Reporting ("CbCR") Safe Harbor,[23] such exception is extremely narrow and will be of limited utility.

ACT respectfully submits that the most straightforward approach to this issue would be for Treasury to remove the proposed modification to the definition of an "income tax" and issue guidance confirming that any loss taken into account for purposes of the GloBE rules is not considered a "foreign use" under the DCL rules. In the alternative, as ACT has previously recommended, taxpayers should be permitted to certify that the inclusion of a dual consolidated loss in the taxpayer's computation of tax under the GloBE rules will not give rise to a foreign use for purposes of section 1503(d) if the inclusion of the loss amount does not alter the taxpayer's tax liability under the GloBE rules in the current year or any other year.

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[20] See Notice 2023-80, Section 3.02 (providing that "a loss may never produce a benefit under the Jurisdictional Top-up Tax, for example, if the ETR in the jurisdiction is at or above the Minimum Rate (without regard to the loss) and the loss is not carried over in determining Jurisdictional Top-Up Tax in another year.")

[21] In the preamble to the Proposed Regulations, Treasury states, "the GloBE Model Rules can also present a typical example of tax residency arbitrage that the dual consolidated loss rules were intended to address." 89 Fed. Reg., at 64757. This statement ignores the material difference between the GloBE Rules and other foreign tax regimes. In most cases, inclusion of a dual consolidated loss in the GloBE computation will not give rise to any "tax residency arbitrage," because the loss will produce no change in the taxpayer's liability for foreign tax in the current year or any other year. Accordingly, taxpayers should be permitted to certify, in a manner similar to the domestic use election found in the current DCL regulations, that the inclusion of the DCL in a taxpayer's GloBE computations will result in no change in the taxpayer's tax liability in the foreign jurisdiction. ACT believes that this approach is consistent with the policies underlying the DCL rules and is no more challenging for taxpayers to demonstrate or for the IRS to audit than a domestic use election under the existing rules. The failure of the Proposed Regulations to permit this approach is simply a failure to acknowledge the fundamental differences between the minimum tax nature of the GloBE computations as compared to other foreign tax computations.

[23] Prop. Treas. Reg. § 1.1503(d)-3(c)(9)

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ACT members are grateful for Treasury's prompt action in removing the DPL rules and would be happy to engage in further dialogue with Treasury and the IRS to ensure that the DCL regime is interpreted and administered in a manner that is consistent with the text and purpose of section 1503(d) as enacted by Congress. In addition, as we have previously noted, we believe that changes to the U.S. international tax rules since the enactment of section 1503(d) call into question the extent to which the DCL rules remain an appropriate policy as applied to U.S. headquartered corporations. Expanding the scope of the DCL rules by regulation, as the Final Regulations did (and the Proposed Regulations further proposed to do) will very often result in U.S. headquartered companies incurring additional foreign tax as a result of restructuring to mitigate the impact of the DCL rules (resulting in a concomitant decrease in U.S. tax), contrary to the interests of the United States. [24] We respectfully encourage Treasury to consider these issues as it re-examines its policy approach with respect to the DCL rules.

We look forward to discussing these matters with Treasury further at your convenience.

Yours sincerely,

Alliance for Competitive Taxation

[24] As we noted in our comment letter on the Proposed Regulations, the DCL rules were adopted to address situations in which a loss is used to reduce tax on income that is subject to U.S. but not foreign tax while the same loss is also used to reduce tax on income that is subject to foreign tax but not U.S. tax. As we have previously noted, since the enactment of section 951A by the Tax Cuts and Jobs Act and repeal of the provisions relating to QBAI in the One Big Beautiful Bill Act, virtually all income of any member of a U.S. headquartered group is subject to current U.S. tax. Given these changes to the U.S. tax regime, ACT believes Treasury and the Congress should reconsider whether the DCL rules as applied to U.S headquartered companies should be repealed in their entirety. At a minimum, these changes should cause Treasury to recognize that expanding the scope of the DCL rules as applied to U.S. companies beyond their long-standing interpretation is unnecessary and inappropriate as a policy matter.