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April 23, 2021

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Mark Warner
Committee on Finance
United States Senate
Washington, DC 20510

Re: Comment letter on "Overhauling International Taxation"

Dear Chairman Wyden and Senators Brown and Warner:

Business Roundtable, which represents over 220 Chief Executive Officers (CEOs) of the largest American companies from all sectors of the economy, appreciates this opportunity to provide our comments on your framework, "Overhauling International Taxation," released on April 5, 2021.

Business Roundtable CEO members lead companies that operate throughout the United States and globally. Business Roundtable member companies employ 20 million workers, invest \$225 billion annually in research and development (R&D), and generate more than \$488 billion in sales for small and medium-sized businesses annually.

Sound U.S. international tax rules should seek to provide a level playing field for American companies in the foreign markets where they compete with their foreign-headquartered counterparts. Success of American companies in foreign markets is fundamental to the strength of the U.S. economy. Globally engaged American companies provide the products and services of American workers to 95 percent of the world's consumers that live outside the United States. The foreign operations of American companies are an essential link to opening up new markets for American products and services.

Globally engaged American companies are centered around American workers and the American economy. In 2018, globally engaged American companies: ¹

¹ Bureau of Economic Analysis, Activities of U.S. Multinational Enterprises, 2018.

- Employed 28.6 million American workers – accounting for two-thirds of their global workforce,
- Within manufacturing, employed 7.5 million American workers – more than half of all U.S. manufacturing employment,
- Paid \$2.3 trillion in compensation to American workers,
- Invested 79 percent of their global capital expenditures in the United States,
- Developed 85 percent of their R&D in the United States, accounting for 73 percent of all U.S. business R&D,
- Accounted for over half of all exports of goods and services from the United States, and
- Generated tens of millions of additional jobs through their U.S. supply chains.

Business Roundtable member companies know that their ability to expand sales in foreign markets directly contributes to greater expansion at home, with greater U.S. employment, U.S. capital expenditure, and U.S. R&D, and increased exports of goods and services from the United States. And the experience of our companies in practice is borne out in academic study.²

Given the gains to the U.S. economy from the success of globally engaged American companies, U.S. tax policy should seek to provide a level playing field for American companies operating in foreign markets relative to their foreign-headquartered competitors. The imposition of U.S. taxes on the foreign operations of American companies – taxes not faced by foreign competitors – creates an unlevel playing field.

Business Roundtable's specific comments on your framework, "Overhauling International Taxation" (the Framework), are provided below.

I. Global Intangible Low-Taxed Income (GILTI)

The United States is the only advanced economy that taxes the active foreign business income of its companies under a global minimum tax, GILTI. As a result, in every foreign market in which American companies compete, American companies – but not their foreign-headquartered counterparts – are potentially subject to additional U.S. tax on their foreign income, taxes beyond the foreign country taxes that all companies face.

While intended as a U.S. base-protection measure, GILTI applies in an overly broad manner: U.S. companies face tax under GILTI on their high-tax foreign income due to U.S. "expense allocation" rules. The determination of foreign taxes on an annual basis gives no credit for taxes paid in prior years and accounts neither for timing differences of deductions between foreign tax law and U.S. tax law nor prior year foreign losses. This causes income that has borne a high average rate of tax over time to be mischaracterized by GILTI as low-tax income in a particular year. In a year a company has foreign income but a domestic loss, GILTI does not serve as a minimum tax, it results in full inclusion of the foreign income, whether high-taxed or low-taxed. All of these factors add to the competitive tax disadvantage faced by U.S. companies.

Any revisions to GILTI should not exacerbate the competitive imbalance faced by American companies.

² Mihir Desai, C. Fritz Foley and James R. Hines, Jr., "Domestic Effects of the Foreign Activities of U.S. Multinationals," American Economic Journal: Economic Policy, February 2009.

The Framework proposes several modifications to GILTI:

Qualified business asset investment (QBAI). The Framework proposes to repeal the deduction for a nominal return on certain foreign tangible property. The deduction is in place to relieve income not prone to income shifting from taxation under GILTI. A similar deduction was provided under President Obama's proposed global minimum tax and the OECD discussions of a minimum tax regime contemplate an even more generous deduction than that which is currently available to U.S. taxpayers.

Business Roundtable position. The deduction should be retained so as not to provide a further competitive disadvantage to U.S. companies.

The GILTI tax rate. The Framework calls for a minimum tax rate of 60-100 percent of the U.S. rate. Under present law, taking into account an ability to credit only 80 percent of foreign taxes under GILTI, GILTI applies up to foreign tax rates equal to 62.5 percent of the U.S. rate (i.e., 13.125 percent) and is scheduled to increase to 78.125 percent of the U.S. rate after 2025 (i.e., 16.41 percent). As no other country in the world imposes a global minimum tax, an increase in the GILTI tax rate would further disadvantage U.S. companies. GILTI is already overly broad in its application, and an increase in the tax rate would exacerbate its adverse effects.

Business Roundtable position. The GILTI tax rate should not be increased to avoid further disadvantaging U.S. companies.

Aggregate calculation across countries. The Framework proposes to change the calculation of GILTI from an aggregate (based on all income and all foreign taxes in all foreign countries) to one determined on a country-by-country basis. A country-by-country calculation would introduce extreme complexity for calculating GILTI for the 100-plus jurisdictions in which large American companies operate. The country-level calculation would exacerbate the failure of GILTI to account for timing differences between foreign tax law and U.S. tax law or provision of foreign tax credit carryforwards to account for high rates of tax paid in a prior year.

As a possible alternative to the complexity of a country-by-country determination, the Framework suggests consideration of a high-tax and low-tax basketing approach. Reducing the complexity of a country-by-country approach is an important objective of the Framework. However, country-level determinations would remain necessary in order to classify operations as high-tax or low-tax each year. Further, if the baskets are defined by reference to cash taxes in a given year, the operations in a country can switch from high-tax in one year to low-tax in another simply due to timing differences between foreign and U.S. tax law. As a consequence, as with the country-by-country calculation, the two-basket approach would result in GILTI applying to income that, appropriately measured, does not constitute low -tax income.

While the absence of timing adjustments also results in the aggregate calculation of GILTI imposing tax on income that is not lightly taxed, the aggregate calculation

mitigates these effects by allowing timing differences to average out across countries.

Finally, unlike the aggregate calculation which results in two companies with the same total foreign income and the same aggregate foreign tax incurring the same amount of GILTI tax, a country-by-country calculation will generally cause their GILTI tax burdens to differ.

Business Roundtable position. The aggregate GILTI calculation should be retained, along with the present-law Treasury regulations providing for the high-tax exclusion.

Expense allocation. The Framework recognizes that expense allocation under GILTI for U.S. research expenses and management functions relating to stewardship is not appropriate. Expense allocation results in an increase in the cost of hiring U.S. employees to perform these services and may lead to a loss in U.S. jobs. The Framework would codify existing Treasury regulations that relieve U.S. research expense from expense allocation under GILTI and extend this relief to stewardship expense.

Although not mentioned by the Framework, allocation of U.S. interest expense under GILTI increases the cost of undertaking domestic capital investment that is partly reliant on debt finance, and may thereby diminish U.S. investment.

Business Roundtable position. Business Roundtable supports the improvement of the expense allocation rules relating to U.S. research expense, U.S. stewardship expense, and U.S. interest expense.

II. Foreign-Derived Intangible Income (FDII)

The FDII provision is a complement to GILTI as a base protection measure and also serves to enhance incentives for the development and retention of intellectual property (IP) and other high-value activities in the United States.

Many other advanced economies have similar measures, commonly referred to as IP boxes.

The Framework proposes to base the FDII benefit in part on U.S. research expenses. Business Roundtable would need to evaluate any specific proposal to revise FDII based on the details of that proposal when made available. However, present-law FDII plays an important role in providing incentives for IP to be developed, retained, and being brought to the United States. Any modifications should only be made after thorough study and evaluation that these would serve to enhance the development and retention of IP in the United States.

Business Roundtable position. Business Roundtable supports maintaining FDII to encourage the retention and development of all IP in the United States.

III. Base Erosion and Anti-Abuse Tax (BEAT)

BEAT creates an alternative tax base intended to limit the tax benefit from certain deductions between a U.S. company and a related foreign entity. As noted by the

Framework, the BEAT calculation disallows tax credits for U.S. job-creating activities that are otherwise encouraged by Congress, such as U.S. investment in R&D (after 2025), clean energy, and affordable housing, and increased employment of disadvantaged workers. The Framework would allow these business tax credits to reduce BEAT.

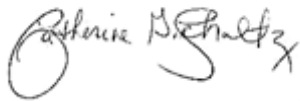
The Framework also gives consideration to allowing foreign tax credits to reduce BEAT. Under present law, the disallowance of foreign tax credits for BEAT results in U.S. double taxation of income that has already borne foreign tax.

Business Roundtable position. Business Roundtable supports allowing all business tax credits and foreign tax credits to offset BEAT liability.

* * *

Business Roundtable looks forward to working with you and the Senate Finance Committee as you consider changes to U.S. international tax law. We believe it is essential to the well-being of American workers and the broader U.S. economy that any modifications to current rules improve, not impair, the competitiveness of globally engaged American companies.

Sincerely,

A handwritten signature in dark ink, appearing to read "Catherine Schultz". The signature is fluid and cursive, with the first name "Catherine" written in a larger, more prominent script than the last name "Schultz".

Catherine Schultz
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