November 9, 2026

Kevin Salinger
Acting Assistant Secretary, Tax Policy
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Comments on proposed regulations implementing section 250 (NPRM REG-117130-25)

Dear Mr. Salinger:

Business Roundtable is an association of more than 200 chief executive officers (CEOs) of America's leading companies, representing every sector of the U.S. economy. Business Roundtable CEOs lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. GDP. Through CEO-led policy committees, Business Roundtable members develop and advocate directly for policies to promote a thriving U.S. economy and expanded opportunity for all Americans.

Attached are Business Roundtable's comments on proposed regulations under section 250 of the Internal Revenue Code that provide guidance on certain income of a domestic corporation that is excluded in the determination of deduction eligible income, as requested by NPRM REG-117130-25 (the "Proposed Regulations"). We appreciate your consideration of these comments. Business Roundtable would welcome the opportunity to discuss these comments further with you or your staff.

I. Introduction

On August 20, 2026, the Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") issued the Proposed Regulations regarding certain income of a domestic corporation that is excluded in the determination of deduction eligible income.[1] The Proposed Regulations were issued in response to changes to section 250 enacted by Public Law 119-21. For taxable years beginning after December 31, 2025, section 250(a)(1) allows a domestic corporation to deduct 33.34 percent of the corporation's foreign-derived deduction eligible income ("FDDEI"). Section 250(b)(1) as amended defines FDDEI as any deduction eligible income ("DEI") of any domestic corporation derived in connection with (i) property sold to any person that is not a United States person and is for a foreign use, or (ii) services provided to any person, or with respect to property, not located within the United States.

[1] REG-117130-25, 91 Fed. Reg. 53792-53803 (Aug. 20, 2026).

In part, the Proposed Regulations would modify §1.250(b)-1(c)(12) to say "The term *foreign-derived deduction eligible income* or *FDDEI* means, with respect to a domestic corporation for a taxable year, the excess (if any, **and not to exceed DEI**) of the corporation's gross FDDEI for the year, over the deductions properly allocable to gross FDDEI for the year, as determined under paragraph (d)(2) of this section. [emphasis added]"

The proposed limitation is not compelled by the text of section 250 and is in tension with both the structure of section 250 following the amendments enacted in Public Law 119-21 and, we believe, Congress' intent for the underlying the provision. Permitting unrelated domestic losses to reduce or eliminate FDDEI would introduce significant distortions into decisions concerning the location of investment and economic activity—the very distortions that Congress designed section 250 to mitigate.

II. FDDEI Limited to DEI

A. The proposed limitation is not compelled by the text of section 250.

FDDEI and DEI are statutorily defined terms. Treasury and IRS do not have authority to define FDDEI more narrowly than the statute does. Elsewhere, when Congress intends a separately computed category of income to be capped by a taxpayer's aggregate income, it has stated so. Section 904(a), for example, expressly limits taxable income from sources without the United States to an amount "not in excess of the taxpayer's entire taxable income". Congress included no comparable language in section 250(b)(1).

Congress does provide a limitation on the section 250 deduction in section 250(a)(2). That limitation based on taxable income demonstrates Congress's willingness and ability to limit the deduction. Given the limitation already adopted by Congress, there is no justification for Treasury and IRS to impose an additional limitation not compelled by the statute.

It does not necessarily follow that Congress intended aggregate DEI, after taking into account losses and deductions associated with other non-FDDEI activities, to operate as a separate annual ceiling on the amount of net FDDEI. The statute can reasonably be understood as identifying which DEI qualifies as FDDEI rather than as requiring losses from unrelated domestic activities to be netted against otherwise positive FDDEI a second time through an aggregate DEI ceiling.

B. The proposed limitation is inconsistent with Congress's stated objective of neutrality between serving foreign markets from the United States

The preamble to the Proposed Regulations states that "Congress enacted these provisions in part to reduce incentives for U.S. multinational enterprises to locate or move intangible income

abroad … and to neutralize tax considerations in choosing whether to serve foreign markets through U.S.-based operations or through CFCs."[2] It goes on to quote the 2017 Senate Budget Committee legislative history which states the section 250 deduction for FDDEI "reduces or eliminates the tax incentive to locate or move … income abroad." [3] The Senate Finance Committee explanation of section 70321 of Public Law 119-21 states that the new 33.34-percent FDDEI deduction and 40-percent deduction applicable to net CFC tested income ("NCTI") generally result in an effective tax rate of 14 percent for both categories of income after taking account of the applicable foreign tax credit rules.[4]

The proposed DEI limitation could defeat the expressed intent of Congress.

For example, assume Taxpayer DP, a domestic corporation, earns $100 of gross income from qualifying foreign sales, incurs $20 of deductions properly allocable to those sales, and therefore earns $80 of net income that otherwise satisfies the requirements for FDDEI. Assume DP has no other deduction eligible income. DP would receive the section 250 deduction on $80.

Now consider Taxpayer DL. Assume the same facts as above except that an unrelated domestic business of DL generates a $60 loss. In this case, aggregate DEI may be reduced to $20. Under the proposed regulation, only $20 of the corporation's $80 of qualifying foreign-derived income would receive the section 250 deduction. The effective tax rate on FDDEI would therefore depend on the profitability of the taxpayer's unrelated domestic activities.

Nothing about that domestic loss changes the economic character of the $80 of income earned from serving foreign customers from the United States. Nor does it change the relative economics of earning that income through domestic operations rather than through a CFC. Nevertheless, the proposed limitation would sharply increase the U.S. tax burden on the former. That result is difficult to reconcile with Congress's express objective of reducing the role of U.S. tax considerations in precisely that location decision.

C. The proposed limitation invites tax planning

The preamble to the Proposed Regulations indicates that a positive feature of an unrelated aspect of the rules is that they "may reduce tax planning activity. The proposed DEI limitation on FDDEI may have the opposite effect. The rule creates an incentive for taxpayers that would otherwise face a domestic loss to restructure their activity to try to accelerate other DEI or defer recognition of FDDEI for the purpose of preventing a limitation on the section 250

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[2] Prop. Treas. Reg. §1.250(b)-1(c)(12) 91 Fed. Reg. 53792, 53795

[3] Senate Committee on the Budget, 115th Cong., *Reconciliation Recommendations Pursuant to H. Con. Res. 71 (available at https://www.govinfo.gov/content/pkg/CPRT-115SPRT27718/pdf/CPRT-115SPRT27718.pdf*).

[4] *Senate Committee on Finance, Finance Committee Section-by-Section, Title VII*, § 70321, at 19–20 (June 2025).

deduction. Taxpayers would incur costs to avoid losing a portion of the benefit Congress intended.

III. Recommendation

We respectfully recommend that Treasury and the IRS revise proposed §1.250(b)-1(c)(12) by deleting the parenthetical phrase **"and not to exceed DEI."** At a minimum, Treasury should provide that negative deduction eligible income attributable to activities unrelated to the production of foreign-derived deduction eligible income does not reduce otherwise positive FDDEI.

Adopting the Business Roundtable recommendation is within Treasury's broad authority under section 250(c) to "prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section [250]."

IV. Conclusion

We appreciate the opportunity to comment on the Proposed Regulations to highlight the issue on which guidance is needed. We would be happy to discuss these comments or any other matters you may find helpful. Please contact Catherine Schultz, Vice President of Tax and Fiscal Policy at **cschultz@brt.org**.