

June 14, 2019

The Honorable Pat Roberts
The Honorable Robert Menendez
U.S. Senate Committee on Finance
The Individual, Excise, and Other Expiring Policies Temporary Tax Policy Task Force
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators:

In your capacity as members of a bipartisan Senate Finance Committee task force on expired and expiring provisions, the undersigned trade associations which represent all states across the nation, are writing to you in support of making permanent, or at least extending for as long as possible, the CFC look-through rule contained in Internal Revenue Code Section 954(c)(6). This exception to the subpart F rules is critical to our ability to compete in foreign markets.

A permanent CFC look-through rule is essential to a competitive international tax system because it facilitates the ability of foreign subsidiaries of American companies to efficiently fund their foreign operations by allowing active business income earned outside the United States to move from one country to another without incurring full and immediate U.S. taxation. This policy helps U.S. companies compete globally.

For a number of reasons, including eliminating the lock-out effect that caused many U.S. companies to leave foreign earnings offshore rather than utilizing those earnings to create jobs in the United States, the TCJA sought to move the United States closer to a territorial tax system. Therefore, current law allows a portion of foreign active business earnings of controlled foreign corporations of U.S. companies (CFCs) to be repatriated to the U.S. parent tax-free.

However, the TCJA retained the subpart F rules of prior law that impose full U.S. tax (at a 21% rate) currently if the income is passive or highly mobile. The TCJA also created a separate category of income, called global intangible low taxed income (GILTI), which is generally comprised of most or all of a CFC's income except its subpart F income. Foreign earnings subject to the GILTI provisions are taxed at a lower U.S. corporate rate of 10.5% (as opposed to the full 21% U.S. corporate rate). In the Senate Finance Committee's explanation of its version of the TCJA, the Committee recognized that "taxing that income at the full U.S. corporate tax rate may hurt the competitive position of U.S. corporations relative to their foreign counterparts." See Senate Finance Explanation at page 365.

Section 954(c)(6) is an exception to subpart F that was enacted in 2006 as a temporary provision and has been renewed numerous times with bipartisan support; it is currently authorized through 2019. The rule generally excludes payments of dividends, interest, rents, and royalties between U.S.-owned foreign subsidiaries in different countries from subpart F treatment, provided the payments are attributable to active business income. While the CFC

look-through rule excepts these payments from full U.S. taxation at 21%, they would still be subject to the GILTI provisions.

The TCJA made essential updates to the U.S. international tax regime, most importantly encouraging U.S. companies to bring foreign earnings home to the United States. While it left the subpart F regime in place, it failed to make permanent the exception from subpart F income under the CFC look-through rule. As a result, after 2019, earnings that are redeployed from a CFC in one country to a CFC in another country will generally be subject to an immediate 21% US corporate tax rate.

The CFC look-through rule recognizes that there should be no U.S. tax penalty under subpart F when American companies redeploy foreign capital among their foreign subsidiaries. This policy remains a necessary piece of a competitive international tax system for the same reasons it was enacted prior to the TCJA.

If the CFC look-through rule expires this year, American companies will face additional U.S. tax costs that will inhibit their ability to redeploy active foreign earnings where they are most efficiently utilized. The CFC look-through rule should be made permanent or, at a minimum, extended. To allow the CFC look-through rule to expire would be a giant step backwards by adding tax costs for U.S. companies when seeking to best serve customers in global markets.

Regards,

American Chemistry Council
American Forest and Paper Association
American Petroleum Institute
Financial Executives International
Information Technology Industry Council
National Association of Manufacturers
National Foreign Trade Council
Semiconductor Industry Association
Silicon Valley Leadership Group
Silicon Valley Tax Directors Group
Software Finance and Tax Executives Council
TechNet
U.S. Chamber of Commerce
United States Council for International Business

cc: The Honorable Charles Grassley
The Honorable Ron Wyden
The Honorable Steve Daines
The Honorable Maggie Hassan