CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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August 28, 2018

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
U.S Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Foreign Tax Credit Transition Rules

Dear Messrs. Mnuchin and Kautter:

The U.S. Chamber of Commerce applauds the continuing work of the Treasury Department and the Internal Revenue Service (IRS) on the implementation of the Tax Cuts and Jobs Act (TCJA). As you continue to develop needed guidance to implement this new law and transition from the old regime, the Chamber would like to bring to your attention a transition issue of great importance to many of our member companies that will determine how their existing foreign tax credit (FTC) carryforwards are dealt with under the new law.

Under potential Treasury regulations,[1] we are concerned that existing FTC carryforwards could be subject to mandatory allocation to new foreign income categories created by the TCJA. If this were to happen, for some firms not only would these carryforwards lose much of their value, but the work needed to determine to which income baskets to retroactively reallocate the FTC carryforwards would be very complicated, overly burdensome, and would likely produce arbitrary results.

Accordingly, the Chamber believes a better approach would be to mirror previous FTC carryforward transition rules, similar to the Tax Reform Act of 1986, which kept general limitation FTC carryforwards in the general limitation category (until used or expired), but also provided an election for taxpayers to prove reallocation of carryforwards to the proper, new income baskets "to the satisfaction of the Secretary."[2] This permissive, rather than mandatory allocation approach, provides a reasonable path for all taxpayers to utilize their finite amount of tax attributes in a fair manner that we believe is consistent with the IRS Code (as amended) and Congressional intent reinforced by historic precedent dating back to the transition rules adopted

[1] Pursuant to §904. Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.
[2] See former §904(d)(2)(J) (2006).

to implement the Tax Reform Act of 1986. Regulations providing a permissive approach would clarify that the current statute keeps general limitation FTC carryforwards in the general limitation category, and would allow taxpayers that no longer earn general limitation income to use FTC carryforwards to offset similar income in the new baskets. We believe this approach is within the Treasury Department's authority to issue regulations that are necessary or appropriate to carry out the purpose of the statute while providing transitional relief to taxpayers under the new law.

The Chamber appreciates your consideration of this matter and applauds your efforts in implementing the newly reformed tax code. We stand ready to assist you as you work to fully implement the new tax law.

Sincerely,

Caroline L. Harris

CC: Justin G. Muzinich, Counselor, Office of the Secretary, U.S. Department of the Treasury
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