U.S. Chamber of Commerce

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Re: Recommendations for Items to be Included on the 2025–2026 Priority Guidance Plan (Notice 2025-19)

Dear Messrs. Salinger and De Mello:

The U.S. Chamber of Commerce ("Chamber") welcomes the opportunity to recommend items to be included on the 2025–2026 Priority Guidance Plan, which will identify guidance projects that the Department of the Treasury ("Treasury") and Internal Revenue Service ("IRS") intend to actively work on as priorities during the period of July 1, 2025–June 30, 2026. We also welcome the invitation to make deregulatory recommendations relating to tax regulations described in section 2(a) of Executive Order 14219.[1] The following recommendations reflect some of the most pressing guidance needs of our member companies from across the industry spectrum but are by no means exhaustive.

Priority Guidance Recommendations

The following recommendations are grouped by subject matter in a manner generally consistent with prior-year Priority Guidance Plans.

Consolidated Returns

- Final regulations under section 1502 removing obsolete rules and updating regulations to reflect statutory changes.[2]

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[1] 90 Fed. Reg. 10583 (Feb. 25, 2025). Examples of such regulations include regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition; regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority; and regulations that impose significant costs upon private parties that are not outweighed by public benefits.

[2] Unless otherwise indicated, all references to "section" are to sections of the Internal Revenue Code of 1986, as amended ("Code").

- Regulations regarding life-nonlife consolidated groups under Treas. Reg. § 1.1502-47.

Corporations and their Shareholders

- Final regulations under the provisions of Part 1 of Subtitle A of Public Law 117-169 (the "Inflation Reduction Act of 2022" or "IRA") regarding the corporate alternative minimum tax ("AMT"), including regulations:

    - allowing consolidated financial statement group members to use consolidated financial statements;

    - eliminating the requirement to track corporate AMT basis in assets, corporate AMT basis in stock, corporate AMT earnings and profits, and accounting for intercompany transactions for corporate AMT purposes;

    - eliminating inconsistencies in the proposed regulations, like Prop. Treas. Reg. §§ 1.1502-56A(k) and 1.59-2(f), as well as the possibility of duplicating adjusted financial statement income ("AFSI");

    - confirming that, for purposes of section 56A(c)(2)(C), the term "dividends" refers to dividends for federal income tax purposes (as defined in section 316(a)), not financial reporting purposes;

    - allowing taxpayers to follow federal income tax principles to determine AFSI resulting from other investments in subsidiary domestic corporations like debt, warrants, and options;

    - simplifying the computation for determining a corporate partner's distributive share of AFSI from any partnership investment;

    - confirming that any automatic accounting method change with respect to an AFSI-only change would have rules similar to those in sections 446 and 481, and that the procedures under Revenue Procedure 2015-13[3] will apply;[4]

    - providing transition relief allowing taxpayers to not take the section 481(a) adjustment into account when computing corporate AMT;

[3] 2015-13 I.R.B. 419.

[4] Such guidance should also include language confirming that taxpayers will receive audit protection on voluntary accounting method change requests for AFSI-only changes.

- providing an elective safe harbor that allows taxpayers to follow the regular tax rules for certain transactions (e.g., acquisitions, liquidations, reorganizations) that may have boot;

- providing an adjustment to exclude unrealized gains or losses (this would be consistent with congressional intent and to avoid the unconstitutional taxation of unrealized crypto gains);

- clarifying that the corporate AMT should be calculated without regard to net operating loss carrybacks with respect to property casualty insurers;

- allowing taxpayers to follow regular tax rules and eliminate the need for separate tracking, along with the creation of pro forma income statement that would not otherwise be created, which would burden relative to computing an acquisition date limitation, particularly where section 382 analysis is likely to be required for other purposes; and

- eliminating the "eligible tax" limitation from the final regulations and remove regular income tax disallowance and suspension rules from corporate AMT foreign tax credit context.

- Final regulations under the provisions of Part 2 of Subtitle A of the IRA regarding the computation and reporting of the 1% excise tax on repurchases of corporate stock made after December 31, 2022, exempting the repurchase of plain vanilla preferred stock from the scope of section 4501,[5] or at the very least, exempting the repurchase of mandatorily redeemable preferred stock that was issued prior to the enactment of section 4501.[6]

General Tax Issues

- Proposed regulations or other published guidance under section 41 addressing substantiation of research credit claims.

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[5] Corporate stock with the following four characteristics is generally considered "plain vanilla preferred stock" for federal income tax purposes: (1) nonvoting; (2) limited and preferred as to dividends and without participation in corporate growth to any significant extent; (3) limited redemption and liquidation premium rights; and (4) nonconvertible. *See generally* I.R.C. §§ 382(k)(6)(A), 1504(a)(4). As such, redemptions of plain vanilla preferred stock are qualitatively akin to repaying a class of debt; they do not resemble the type of opportunistic stock repurchases that Congress sought to curtail with the new excise tax.

[6] *But see* discussion *infra* pp. 5–6 (recommending withdrawal of the proposed "funding rule" in Prop. Treas. Reg. § 58.4501–7(e)(1)).

- Proposed regulations under section 174 and other provisions of the Code addressing the amortization of post-2021 research or experimental expenditures and related issues, including regulations:

    - confirming that the definition of "specified research and experimental expenditures" as provided in Notices 2023-63[7] and 2024-12[8] applies only for purposes of the amortization rules under section 174(a), and that the long-standing definition of "research or experimental expenditures" continues to apply for all other purposes; and

    - clarifying the effects of the interaction between the requirements of section 59(e) and section 174, and whether the 10-year amortization election under section 59(e) remains available for some or all post-2021 research or experimental expenditures.

International

- Regulations confirming that a foreign country's qualifying domestic minimum top-up tax ("QDMTT"), as defined in Article 10 of the OECD Global Anti-Base Erosion Model Rules (Pillar Two), generally meets the requirements for a creditable foreign income tax under section 901.

- Final regulations or other published guidance under sections 959 and 961 concerning previously taxed earnings and profits ("PTEP") under subpart F, including guidance:

    - confirming that taxpayers may elect to apply—and rely on—the proposed regulations as issued in their entirety;

    - eliminating the rule under Prop. Treas. Reg. § 1.961-11(e)(2)(ii) and allowing section 961(c) basis to create a loss that is allocable to the amount included under section 951 in the U.S. shareholder's gross income;

    - providing a mechanism to prevent double taxation of PTEP that may arise due to the share-by-share approach adopted by the proposed regulations with respect to section 961(b) basis increases;

[7] 2023-39 I.R.B. 919.

[8] 2024-5 I.R.B. 616.

- retaining the rules regarding how positive section 961(c) basis is applied with respect to a covered shareholder;

- adding a de minimis threshold with respect to "covered shareholders";

- reconsidering the treatment of partnerships and partners under the proposed regulations;

- incorporating a safe harbor provision under which partners must notify the partnership if there are any U.S. shareholders in the ownership chain, similar to section 4 of Revenue Procedure 2019-40;[9] and

- confirming that derived basis adjustments and successor PTEP are not partnership-related items subject to BBA reporting and penalties because they are based on the partner's books and records.

Tax Deregulatory Recommendations

The Chamber respectfully recommends that Treasury and the IRS repeal or withdraw and fundamentally reconsider the following rules, each of which is described in one or more paragraphs of section 2(a) of Executive Order 14219.

Excise Tax on Repurchase of Corporate Stock – Proposed Funding Rule

The Chamber respectfully urges Treasury and the IRS to withdraw the so-called "funding rule" from the proposed regulations under section 4501 regarding the new excise tax on repurchases of corporate stock, which is not based on the best reading of the underlying statutory authority.

In enacting the new excise tax on repurchases of corporate stock, Congress provided special rules for its application to acquisitions of stock of certain foreign corporations. One of these rules appears in section 4501(d)(1), which applies "[i]n the case of an acquisition of stock of an applicable foreign corporation by a specified affiliate of such corporation." Under this rule, the acquisition of a foreign publicly traded corporation's stock by a U.S. specified affiliate of the corporation is treated as a repurchase subject to the excise tax.[10]

While the statute by its terms applies only to acquisitions of an applicable foreign corporation's stock by a U.S. specified affiliate of that corporation, the

[9] 2019-40 I.R.B. 982.

[10] Where a U.S. specified affiliate of an applicable foreign corporation acquires stock of the applicable foreign corporation, section 4501(d)(1) treats the acquisition as a repurchase of the U.S. affiliate's stock.

proposed regulations would expand the application of the excise tax to repurchases made by the foreign corporation itself. Under the proposed "funding rule," a U.S. specified affiliate of an applicable foreign corporation would be treated as acquiring stock of the applicable foreign corporation to the extent the U.S. affiliate "funds by any means (including through distributions, debt, or capital contributions), directly or indirectly, a covered purchase with a principal purpose of avoiding the section 4501(d) excise tax."[11] Here, the Chamber shares the view expressed by numerous other stakeholders that the proposed funding rule is not supported by the text of the statute and would contravene congressional intent.[12] Treasury and the IRS should act affirmatively to withdraw this unfounded rule from the proposed regulations.

Rules Regarding Certain Disregarded Payments and Dual Consolidated Losses

The Chamber respectfully recommends that Treasury and the IRS publish a notice of proposed rulemaking to rescind Treasury Decision 10026 and thereby remove the final regulations regarding certain disregarded payments that give rise to deductions for foreign tax purposes and avoid the application of the dual consolidated loss ("DCL") rules.[13] These regulations were finalized in the waning days of the Biden administration and purport to implement administratively what Congress has not authorized statutorily: U.S. adoption of the OECD Global Anti-Base Erosion ("GloBE" or "Pillar Two") model rules.

Although Congress delegated authority to Treasury under the statute to explain specific areas of section 1503(d), this authority does not contemplate Pillar Two—a novel global minimum tax regime that neither existed nor was considered by Congress during the legislative process. The final regulations expand the universe of foreign income taxes to which the DCL rules must be applied to include QDMTTs and income inclusion rule ("IIR") taxes enacted by foreign countries under the GloBE model rules. Treating top-up taxes imposed under a foreign country's QDMTT or IIR as being within the scope of the DCL rules would represent a paradigm shift in the DCL rules

[11] Prop. Treas. Reg. § 58.4501–7(e)(1), 89 Fed. Reg. 25980, 26054 (Apr. 12, 2024).

[12] *See, e.g.*, N.Y. St. B. Ass'n Tax Sec., Rep. No. 1494, Report on Proposed Regulations Under Section 4501 8 (June 4, 2024) (observing, inter alia, that the statute makes no reference to an acquisition that is "funded" or made "directly or indirectly" by a specified affiliate, and that Congress obviously could have included such language or written a broader rule if it intended the excise tax to apply to a broader range of transactions involving foreign public companies).

[13] Rules Regarding Certain Disregarded Payments and Dual Consolidated Losses, T.D. 10026, 90 Fed. Reg. 3003 (Jan. 14, 2025).

that cannot be justified absent legislation from Congress. Thus, the final regulations should be removed for want of statutory authority.

Guidance Related to the Foreign Tax Credit

The Chamber further recommends that Treasury and the IRS publish a notice of proposed rulemaking to rescind Treasury Decision 9959 and thereby remove the final foreign tax credit regulations published in January 2022.[14] Notably, these regulations were largely—and temporarily—suspended by Notice 2023-55 pending further study.[15] Nearly two years later, however, it is incumbent on Treasury and the IRS to address the lingering uncertainty posed by this indefinite administrative relief and take the next step toward removing and reproposing these unduly burdensome rules.

Sourcing of Income from Cloud Transactions

Finally, the Chamber respectfully recommends that Treasury and the IRS withdraw and fundamentally reconsider their recently proposed regulations addressing the source of income derived from cloud computing and digital transactions.[16] The proposed regulations would impose a rigid, formulaic new framework for determining the source of income from such transactions that is largely unmoored to the statutory place-of-performance test. In so doing, the proposed regulations would impose significant administrative and compliance costs on taxpayers that would not be outweighed by any measurable public benefit. We therefore urge Treasury and the IRS to withdraw them.

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[14] Guidance Related to the Foreign Tax Credit; Clarification of Foreign-Derived Intangible Income, T.D. 9959, 87 Fed. Reg. 276 (Jan. 4, 2022) (as corrected by 87 Fed. Reg. 45018, 45021 (July 27, 2022)).

[15] I.R.S. Notice 2023-55, 2023-32 I.R.B. 427 (as extended by I.R.S. Notice 2023-80, 2023-52 I.R.B. 1583).

[16] Source of Income From Cloud Transactions, REG-107420-24, 90 Fed. Reg. 3075 (Jan. 14, 2025).

The Chamber appreciates the opportunity to provide these recommendations for items to be included on the 2025–2026 Priority Guidance Plan, and we urge Treasury and the IRS to maintain close liaison with the business community throughout the plan year in working on these and other guidance projects. To that end, we would welcome the opportunity to discuss our recommendations with you or your colleagues in further detail and provide whatever additional information you may require. Please contact Sarah Corrigan, Tax Counsel, at (202) 680-8008 or SCorrigan@USChamber.com. Thank you for your time and attention.

Sincerely,

Watson M. McLeish
Senior Vice President, Tax Policy
U.S. Chamber of Commerce