

NATIONAL FOREIGN TRADE COUNCIL, INC.

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July 23, 2008

The Federal Minister of Finance
Mr. Peer Steinbrück
Federal Ministry of Finance
Wilhelmstraße 97
11016 Berlin
Federal Republic of Germany

Dear Minister Steinbrück:

The National Foreign Trade Council, organized in 1914, is an association of some 300 U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities, and our members have for many years been substantial investors in many countries. U.S.-based multinational companies have a long history of robust investment in the German economy in particular, presently employing approximately 800,000 Germans.

We welcome Germany's interest in attracting and retaining investment and the German tax rate reductions recently enacted to that end. Our member companies are concerned, however, about the proposed change in the rules relating to the transfer of electronic accounting records to EU/EEA countries. By requiring records to be kept in Germany, the EU or the European Economic Area (EEA), Germany is failing to recognize the global nature of today's marketplace. The emergence of electronic commerce and the electronic flow of business data means that companies can keep business records in a third country, and access those records when needed. The provision requiring the immediate relocation of electronic financial records to the tax entity's home country, if so requested by the German Tax Authorities, is unreasonable in today's global marketplace.

At present, Germany is the only EU Member State to require that accounting records be maintained and kept in the country in which the corresponding business entity is located (146 paragraph 2). Even the pending proposal is stricter than comparable rules in most if not all other member states. The NFTC would like to see this rule and the corresponding penalties associated with it significantly modified. The proposed change would result in the tightening of the existing rules and discriminatory penalties against non-EU based companies. The NFTC opposes the imposition of the new territorial restrictions. Generally, all accounting activities not located in EU countries, e.g. the United States, would be considered illegal, and would be subjected to penalties of up to €250,000. The penalties should be eliminated. For a US-based multinational, the main accounting function is likely to reside in the U.S., and this typically

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includes data relevant for the companies' German operations. Under current law, companies have generally been able to maintain records in a third country without incurring punitive penalties. It has been possible to satisfy the record maintenance requirements by preparing regular secure backups of the data and transferring this information, when needed to the Germany-based subsidiary. The pending proposal will nullify these arrangements. In a fully integrated systems environment, it is almost impossible for a multinational corporation to aggregate the German records and move them into an acceptable EU location, without incurring a significant financial and logistical burden. We understand that the availability of records for audit purposes is, and should be, the key goal of the German Tax Authorities. However, it is not reasonable to impose such drastic steps on multinational corporations without realizing any significant gain in tax administration. The provision of records is not dependent on where those records are maintained. Germany currently has the ability to penalize companies in various ways who do not provide adequate tax information when requested, e.g. the government has the right to estimate or adjust taxable income when taxpayers do not provide adequate documentation, and those penalties already subject the taxpayers to costly sanctions.

The U.S. and Germany recently ratified a new tax treaty. The tax treaty should be considered on par with an administrative assistance agreement with Germany. A provision of that treaty provides for the sharing of tax information between the two countries. Under the provisions of the tax treaty, financial records of U.S.-based multinationals doing business in Germany, should be permitted to be retained in the U.S., or another non-EU or non-EEA country, without penalty.

Our members would be happy to work with you and your colleagues to help further develop an approach that would be less harmful to inbound investment. We are sending a similar letter extending the same offer to the Federal Minister of Finance and to the Finance Minister of each of the *Länder*. Please let us know how we can contribute towards a solution.

Sincerely,



William A. Reinsch
President