



September 30, 2022

The Honorable Janet L. Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Yellen:

The National Foreign Trade Council (the “NFTC”) is writing again to respectfully ask for a delay of the effective date for the final regulations regarding Foreign Tax Credits (FTCs) T.D. 9959 released by the Department of the Treasury (“Treasury”) on December 28, 2021.

The NFTC, organized in 1914, is an association of 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. Our members support establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations.

The new regulations represent a drastic departure from the established rules that have been in place for the past several decades. Our members are working to comply with these regulations, which require an intensive re-examination of foreign tax law in each jurisdiction in which they operate. The change to the treatment of FTCs materially alters tax liability and requires changes in the determination of tax liability, and financial reporting for income taxes. This is particularly onerous for companies with a calendar year, as the compliance and administrative burden in applying these regulations for financial statement purposes has been daunting, and the year-end financial statement process presents unprecedented challenges. For our members with an October 1 fiscal year, the compliance burden has just begun with continued lack of clarity on key issues as they also weigh the new tax laws passed as part of the Inflation Reduction Act (“IRA”) (P.L. 117-169). Given that Treasury is now also working to write legislatively mandated regulations on stock buybacks, green energy, and the new minimum tax, we are concerned that clarification of the FTC regulations will be further delayed.

Earlier this year, Treasury publicly stated that an additional Notice of Proposed Rulemaking will be released to further clarify the cost recovery requirement and withholding taxes which apply to royalties, but that clarification has not been issued. Given our understanding that the safe-harbor in the forthcoming Proposed Regulations will presumably permit foreign tax credits on withholding taxes relating to royalty payments where the intangible property is exploited in the withholding country, we believe it to be prudent to allow taxpayers the ability to review the proposed safe-harbor as soon as possible. We also await clarification on concerns about FTCs for

withholding taxes on services income, which you committed to working on during your June 2022 testimony before the Senate Finance Committee. Members of the House Ways and Means Committee also requested that you provide certainty with the FTC regulations during your testimony so U.S. businesses could plan accordingly –this remains a concern for our membership.

Given the widespread requests to delay the implementation of the FTC regulations and that revised Proposed Regulations have not been released, we respectfully request that you exercise your authority now, prior to the year-end period, to delay the effective date to at least January 1, 2023, to allow taxpayers to understand the changes from any additional guidance, and to allow the IRS to properly implement the changed regulations.

Furthermore, a delay in the effective date will accommodate recent policy developments in Brazil with respect to transfer pricing processes and their accession into the Organization for Economic Co-operation and Development (OECD). The Brazilian market is significant for many American businesses and without a bilateral tax treaty, the changes to the FTC regulations are particularly harmful. The adoption of a new Brazilian transfer pricing system is expected in 2023, so delaying the effective date allows Brazil to implement the changes which the U.S. has advocated without harming American businesses that operate in this critical market.

Due to the difficulties surrounding compliance with these regulations that we outlined in our March 3, 2022 letter and that others in the business community have raised, we again respectfully request that you authorize a delay in effective date of the FTC regulations.

Sincerely,



Jake Colvin
President

cc:

The Honorable Lily Batchelder, Assistant Secretary (Tax Policy)
Mr. William M. Paul, Acting Chief Counsel, Internal Revenue Service
Mr. Peter Blessing, Associate Chief Counsel (International), Internal Revenue Service
The Honorable Richard E. Neal, Chairman, House Committee on Ways & Means
The Honorable Kevin Brady, Ranking Member, House Committee on Ways & Means
The Honorable Ron Wyden, Chairman, Senate Committee on Finance
The Honorable Mike Crapo, Ranking Member, Senate Committee on Finance

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