September 30, 2025

The Honorable Ken Kies
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
Washington, DC 20220

NFTC Recommendations for Regulatory Guidance on the One Big Beautiful Bill Act

The National Foreign Trade Council (the "NFTC") is writing to provide input on tax regulatory guidance to be considered in the regulatory processes for the One Big Beautiful Bill Act, P.L. 119-21, (the "OBBB").

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.

General Comments

The NFTC appreciates the Treasury for inviting public recommendations on the regulatory process of the OBBB. We respectfully submit recommendations for proposed regulations and other guidance for Treasury's consideration. We request that the promulgation of all guidance be consistent with the statute.

Specific Rulemaking & Guidance Requests

Domestic Research and Experimental Expenditures (§ 174A)

§ 70302 of the OBBB (Full expensing of domestic research and experimental expenditures) modifies § 174 to allow full expensing of research and experimental expenditures. The provision does not provide guidance on the transitional period with regard to the interaction between this expensing and the Corporate Alternative Minimum Tax ("CAMT") threshold. The interaction between the research and development ("R&D") expensing reinstated in 2025 and prior years' amortization creates a reduction in taxable income and regular tax liability without a corresponding impact to Adjusted Financial Statement Income ("AFSI"). To mitigate the unintended consequences of CAMT liability triggered by the interaction between the R&D expensing and the Tax Cuts and Jobs Act ("TCJA") amortization rules for 2022 through 2024, Treasury should consider regulatory guidance that would allow taxpayers to adjust their AFSI for CAMT purposes for any domestic R&D expenditures paid or incurred in taxable years beginning after 12/31/2021 and before 1/1/2025. Effectively, for each remaining year, taxpayers would

reduce their current year AFSI by the amount of R&D expenses amortized in 2022 through 2024 that have not yet been fully amortized for CAMT purposes.

Similarly, a taxpayer's election to claim the accelerated deduction for unamortized domestic R&D expenditures under § 174A(f)(2), when combined with current-year R&D expenses, may have the unintended consequence of decreasing a taxpayer's regular taxable income for those one or two years to such a degree that it causes the taxpayer to have Base Erosion and Anti-Abuse Tax ("BEAT") liability when it otherwise would not. Creating a BEAT liability would be a significant disincentive to taxpayers to make the election under § 174A(f)(2). NFTC requests that Treasury issue guidance that would allow taxpayers to add-back the accelerated deduction under § 174A(f)(2) solely for purposes of determining "regular tax liability" for purposes of § 59A(b)(1)(B).

Authority: § 70302(f)(2)(C) of OBBB provides specific authority directing that "the Secretary of the Treasury (or the Secretary's delegate) shall publish such guidance or regulations as may be necessary". Furthermore, Treasury has specific authority pursuant to § 56A(e), which provides that "The Secretary shall provide such regulations and other guidance necessary to carry out the purposes of this section…", and under § 56A(c)(15), providing that "The Secretary shall issue regulations or other guidance to provide for such adjustments to adjusted financial statement income as the Secretary determines necessary to carry out the purposes of this section, including adjustments to prevent the omission or duplication of any item…". As well as under § 59A(i) which specifies that "The Secretary shall prescribe such regulations of other guidance as may be necessary or appropriate to carry out the provisions of this section, including regulations…".

Amortization of Certain Domestic Research or Experimental Expenditures (§ 174A(c))

§ 70302 of the OBBB allows taxpayers to capitalize domestic research and experimental expenditures and amortize them ratably over a period of not less than 60 months in § 174A(c)(1). The amendment in the final version of § 174A(c)(1)(b) states that the amortization period begins with the month in which the taxpayer first realizes benefits from such expenditures. This introduces administrative complexity to the election and is disadvantageous for industries where the research and development process can take many years, often longer than the stated 60-month period of amortization.

The election process should align with tax § 59(e) (optional 10-year write-off with certain tax preferences), allowing an amortization deduction beginning with the taxable year in which such expenditure was made. Additionally, Revenue Procedure 2025-28 indicates that the § 174A(c) election is applicable to all domestic research and experimental expenditures. An all-or-nothing election is restrictive on taxpayers. This also represents a departure from the project-by-project accounting in Treas Reg § 1.174-4.

Request: The NFTC requests that Treasury issue regulations that provide taxpayers the ability to make an election to capitalize research or experimental expenditures under § 174A(c) with respect to any portion of research or experimental expenditures (i.e., designate an amount to

capitalize similar to the election in § 59(e)(4)(A)) and/or provide an election to capitalize research and experimental expenditures with respect to particular projects, consistent with Treas. Reg. § 1.174-4(a)(5).

Authority: § 70302(f)(2)(C) of OBBB specifies that "the Secretary of the Treasury (or the Secretary's delegate) shall publish such guidance or regulations as may be necessary".

Additionally, the amendment to § 174A(c) does not include language that explicitly includes deferred expenses as expenditures properly chargeable to capital accounts for the purposes of § 1016(a)(1) (regarding adjustments to basis). This provision was previously provided under § 174(b).

Request: The NFTC requests that Treasury work with Congress on a technical correction to the statute in § 174(b) to explicitly include deferred expenses as expenditures properly chargeable to capital accounts.

Specified Research or Experimental Expenditures (§ 174(a))

As Treasury develops regulations to implement the changes in OBBB to § 174 and § 174A, we reiterate our request in relation to "specified research or experimental expenditures" ("SRE Expenditures").

Previously in Notices 2023-63 and 2024-12, Treasury and the IRS addressed instances of "multiple capitalization" of the same expense related to foreign R&D. This was accomplished by adding a "rights or risk" requirement for defining SRE Expenditures, which has implications for numerous other provisions that rely on the definition of "research or experimental expenditures" in § 174(a).

Request*:* The NFTC requests that Treasury confirm that the definition of SRE Expenditures applies only for purposes of the capitalization rules under § 174(a) and that the long-standing definition of "research or experimental expenditures" continues to apply for all other purposes.

Furthermore, Treasury should clarify that any "research or experimental expenditures" that are not required to be capitalized by § 174(a) continue to be eligible for 10-year elective amortization.

Authority: OBBB did not provide explicit regulatory authority to implement changes to § 174(a). However, Treasury should exercise its authority under § 7805(a), which provides the Secretary with authority "including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Treatment as deferred expenses (§ 1.174-4)

Request: The NFTC requests that Treasury provide clarification as to whether the regulations in § 1.174-4 will be the governing standard for deferred expenses going forward with regard to § 174A (Domestic Research or Experimental Procedures).

Authority: OBBB did not provide explicit regulatory authority to implement § 70322. However, Treasury should exercise its authority under § 7805(a), which provides the Secretary with authority "including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Foreign-Derived Deduction Eligible Income and Net CFC Tested Income (§250(b)(3)(A)(i) and (ii))

§ 70322 of the OBBB (Determination of deduction eligible income) modifies the determination of deduction for Foreign-Derived Deduction Eligible Income ("FDDEI") in § 250(b)(3)(A)(i) and (ii).

Request: The NFTC requests that Treasury clarify the allocation rules for stewardship and SG&A for FDDEI. Specifically, we request clarification as to whether stewardship and SG&A are 'properly allocable' to FDDEI. Namely, Treasury should confirm that stewardship should not be allocated to FDDEI, and these rules should be consistent between NCTI and FDDEI to limit incentives to shift income from one to the other.

Additionally, a new carve-out to deduction eligible income ("DEI") in § 250(b)(3)(VII) removes from DEI any income and gain from the sale or disposition of intangible property and any other property of a type that is subject to depreciation, amortization, or depletion by the seller. The former includes gain and income from deemed transactions under § 367(d).

Request: The NFTC requests that Treasury clarify that the above carve-out in § 250(b)(3)(VII) does not otherwise apply to ordinary course sales of inventory property to non-U.S. persons or customers, where the property is of a type that, if used differently by the seller in its trade or business, would be depreciable in the hands of the seller.

Under § 250(b)(3)(ii), a taxpayer's deduction for R&D expenses will no longer reduce DEI for tax years beginning after December 31, 2025. However, if a taxpayer elects to claim the accelerated deduction for unamortized domestic R&D expenditures under § 174A(f)(2), such deduction will reduce DEI only for the taxpayer's first tax year beginning after December 31, 2024. This will be a significant disincentive to taxpayers to make the election under § 174A(f)(2) because if the taxpayer instead continues to amortize such R&D expenses, the tax amortization deduction for those expenses for years beginning after December 31, 2025, will never reduce DEI.

Request: To align with the legislative intent of § 174A and the OBBB more broadly, the NFTC requests that Treasury clarify that if a taxpayer elects to claim the accelerated tax deduction for

unamortized domestic R&D expenditures under § 174(f)(2), such deduction will not reduce DEI for the taxpayer's first tax year beginning after December 31, 2024.

Authority: OBBB did not provide explicit regulatory authority to implement § 70322. However, Treasury should exercise its authority under § 7805(a) which provides the Secretary with authority "including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

Taxable Year of Certain Foreign Corporations (§ 898(c))

§ 70352 of the OBBB (Repeal of election for 1-month deferral in determination of taxable year of specified foreign corporations) strikes paragraph 2 of § 898(c), removing the election for one-month deferral. In addition, it adds a transition rule on the effective date of the repeal. This creates a transition period wherein there is a mismatch within tax years and insufficient net tested income during the short tax year.

Congress recognized that FTCs related to taxes paid or accrued in the first short tax year and succeeding tax year may be lost due to insufficient tested income in those years. To moderate the impact, the statute instructs that Treasury may allocate the taxes from the "first and succeeding" tax periods "among such taxable years" thereby implying allocations to the first and succeeding tax years. It was not explicitly provided that a portion of taxes paid or accrued in the succeeding tax year could be allocated to a later tax year.

The NFTC recommends that specified foreign corporation ("SFC") taxes accrued in the first tax year without the one-month election be allocated proportionally based on the aggregate number of months in the first and succeeding tax years for SFCs for which the local tax return year is the same as the US shareholder year. For SFCs for which the local tax return year is not the same as the U.S. shareholder year, and for which no local taxes are deemed paid or accrued as of the last month of the new CFC year, the amount of taxes allocated to the first tax year should be zero.

SFC taxes paid or accrued in the succeeding tax year should be subject to an election to be allocated to the CFC tax year within which the local tax year ends. For SFCs for which the local tax return year is the same as the CFC tax year, "bunching" may still occur as taxes paid or accrued in both the first and succeeding tax year will be allocated to the succeeding year.

It is unclear if the statute authorizes Treasury to allocate a portion of succeeding year taxes to a later tax year. To prevent bunching and aid in the transition, the NFTC recommends that Treasury allow a taxpayer to elect to allocate 50% of the taxes paid or accrued in the succeeding tax year to a later tax year. For SFCs for which the local tax year is not the same as the CFC tax year, the amount of taxes allocated to the succeeding tax year would operate in a similar manner to prior law.

Request: The NFTC requests that Treasury provide clarification on the tax allocations for the shortened tax year resulting from the repeal of the CFC 1-month election, and how to handle multiple majority US shareholders that may have differing tax years.

Authority: OBBB did not provide explicit regulatory authority to implement § 70352. However, Treasury should exercise its authority under § 7805(a) which provides the Secretary with authority "including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

Rules for Allocation of Certain Deductions to Foreign Source Net CFC Tested Income for Purposes of Foreign Tax Credit Limitation (§ 904(b))

In § 70311(a) of the OBBB (Rules for Allocation of Certain Deductions to Foreign Source Net CFC Tested Income for Purposes of Foreign Tax Credit Limitation.) § 904(b), on foreign tax credit ("FTC") limitations, is modified by the addition of limitations on allocation of deductions with regard to Net Controlled Foreign Corporation ("CFC") Tested Income ("NCTI"). The new limitation on deductions allocated to NCTI in § 904(b)(5) will, relative to current law, better help achieve the policy objectives of the historic Global Intangible Low-Taxed Income ("GILTI") regime to only subject low-taxed foreign operations to residual U.S. tax. However, there are still circumstances in which a taxpayer may bear a U.S. tax cost on their high-taxed foreign income.

For example, this may occur when there is a mismatch between U.S. and foreign tax years; a taxpayer's foreign income taxes paid in the numerator of the taxpayer's effective tax rate are totaled on the basis of a foreign taxable year, while the income in the denominator of the rate is based on a taxpayer's U.S. tax year. Taxpayers with affiliates in high-taxed jurisdictions may nonetheless owe residual U.S. tax on NCTI due to the mismatched calculation, even if foreign tax is actually being paid at the high statutory rates over time. Treasury should take this opportunity to further the intent of Congress to only tax low-taxed tested income by providing an election allowing taxpayers to allocate foreign income taxes under § 960, in the case of mismatched tax years, to which the foreign tax relates.

The NFTC also recommends that, in the rulemaking process, certain expenses and unrelated losses not be allocated to foreign source income. First, stewardship expenses should not be allocated to foreign source income. This should be applicable to all baskets, but stewardship should minimally not be allocated to NCTI. Further, in order to adhere to the policy behind the addition of new § 904(b)(5) of only subjecting actual low-taxed foreign operations to U.S. tax, Treasury should interpret deductions "directly allocable" to NCTI to exclude losses which are unrelated to a CFC's operations from being allocated to the § 951A separate basket. Overall domestic losses (within the meaning of § 904(g)), separate limitation losses (within the meaning of § 904(f)(5)) and § 986(c) losses, none of which arise as a direct result of a CFC's operations abroad which are taxed under IRC § 951A but which instead are shareholder-level impacts, should be subject to a five-year election wherein businesses can elect for all such losses to be treated as not being "directly allocable" to NCTI, or to defer these additional losses which exceed the limitation to future periods.

In addition, the addback of expenses allocated to the § 245A basket as part of the foreign tax credit limitation calculation is another reason that even high-taxed GILTI could be subject to residual U.S. tax. For example, if there is a taxpayer with $900 of domestic gross income, $900 of expenses not directly allocable to GILTI, and $100 of GILTI income subject to tax at a 14% rate, one would expect that there should be no residual tax due on the GILTI income. And, in that case, that would be true: the taxpayer would have a net GILTI inclusion (after § 250) of 60, and the taxpayer's FTC limitation would be calculated as (x) $12.60 (tentative U.S. tax at 21% on GILTI of $60) multiplied by (y) ((i) the $60 foreign GILTI inclusion over (ii) $60 of worldwide income—in other words, 1 over 1), for a GILTI FTC limitation of $12.60, which is equal to the 90% of foreign taxes actually paid. So GILTI FTCs would be available to fully offset the U.S. tax due on the GILTI inclusion.

Now, assume the same facts, except that in addition, the taxpayer has $100 of § 245A income. With that additional fact, $90 of expenses are allocated to the § 245A basket. The allocation of some of the taxpayer's expenses to the § 245A basket means that the denominator in the FTC limitation calculation is adjusted upwards, because of the operation of § 904(b)(4) which requires that a taxpayer's entire taxable income is determined without regard to deductions allocable to § 245A income. The GILTI FTC limitation in that case will be equal to (x) $12.60 (tentative U.S. tax at 21% on GILTI of $60) multiplied by (y) ((i) the $60 foreign GILTI inclusion over (ii) $150 of worldwide income after the $90 addback), for a GILTI FTC limitation of $5.04. In such a case, residual U.S. GILTI tax will be due, notwithstanding that foreign tax was paid at a 14% rate, and the unused GILTI FTCs will be permanently lost by virtue of the lack of a carryforward under § 960.

This leaves taxpayers who have elected the high tax exception in past years between a rock and a hard place going forward. Those taxpayers can decline to elect high tax going forward (or not meet the high tax exception), and owe residual U.S. tax on their high-foreign-taxed GILTI as a result of the impact of allocated expenses to the § 245A basket. Or, those taxpayers can continue to make the high tax election going forward, which creates more 245A E&P, which in turn will mean the § 245A basket continues to grow causing more non-directly allocable expenses to be allocable to the § 245A basket. If such a taxpayer fails to qualify for the high tax exception in a future year, then the impact of expenses allocated to the § 245A basket will be more severe. Treasury should consider whether these impacts, which are contrary to the intent of the GILTI regime, can be rectified in regulations.

Authority: OBBB did not provide explicit regulatory authority to implement § 70311. However, Treasury should exercise its express authority under §904 and its delegated authority under § 7805(a) which provides the Secretary with authority "including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Additionally, § 70311 of the OBBB (Modifications related to foreign tax credit limitation) modified foreign tax credit limitations, but did not provide clarification or guidance on whether stewardship, or selling, general and administrative expenses ("SG&A") were directly allocable.

Request: The NFTC requests that Treasury provide clarification of the allocation rules for stewardship and SG&A for NCTI, specifically, clarification as to whether stewardship and SG&A are 'directly allocable'. Treasury should confirm that stewardship expenses are not treated as "directly allocable" to NCTI; based on transfer pricing rules in the § 861 regulations, "directly allocable" expenses are likely those that should be borne or charged to the CFC in any case. Therefore, U.S.-based employee expenses should not be "directly allocable" to a CFC, as those expenses are either stewardship and not directly allocable, or more properly a cost of the CFC and should be subject to recharge or transfer pricing adjustments under current law. This treatment will ensure that there is no incentive to hire employees abroad rather than in the U.S. (for fear that U.S.-based employee expenses will reduce the § 951A basket limitation, while foreign employee expenses would reduce NCTI).

Deemed Paid Credit (960(d)(4))

§ 70312 of the OBBB (Modifications to determination of deemed paid credit for taxes properly attributable to tested income) modifies § 960, including the addition of § 960(d)(4).

Request: The NFTC requests that Treasury provide clarification as to whether the disallowance of foreign tax credit with respect to distributions of previously taxed net CFC tested income is driven by inclusion timing rather than distribution timing, *i.e.*, that it applies to foreign income taxes paid or accrued (or deemed paid) with respect to distributions of PTEP resulting from 2026 and later inclusions.

Authority: OBBB did not provide explicit regulatory authority to implement § 70312. However, there is an express delegation of authority in § 960 (f) and delegated authority under § 7805(a) which provides the Secretary with authority "including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Conclusion

NFTC appreciates your consideration of these requests for guidance. We look forward to a productive dialogue on these matters. If we can provide any additional information as you develop guidance on OBBB, please do not hesitate to contact Anne Gordon (agordon@nftc.org).

cc:

Ms. Rebecca Burch, Deputy Assistant Secretary (International Tax Affairs)
Mr. Kevin Salinger, Deputy Assistant Secretary (Tax Policy)
Mr. Eric Oman, Deputy Assistant Secretary (Tax Legislation)