May 29, 2026

Internal Revenue Service
CC:PA:01:PR (Notice 2026-23)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: NFTC Recommendations for Items to Be Considered for the 2026-2027 Priority Guidance Plan

The National Foreign Trade Council (the "NFTC") is writing in response to the Department of the Treasury's ("Treasury") and the Internal Revenue Service's ("IRS") invitation in Notice 2026-23 ("the Notice"), published March 23, 2026, to submit recommendations for items to be included as part of the 2026-2027 Priority Guidance Plan (the "PGP").

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 IRS and Treasury for inviting public recommendations on the PGP.

As requested by the Notice, we would like to express our support for continued consideration of the current 2025-2026 Priority Guidance Plan projects. We provide further suggestions on guidance to revisit or withdraw in accordance with E.O. 14219. Additionally, we would like to express our support for the consideration of new additions to the 2026-2027 Priority Guidance Plan, including, but not limited to:

1. *Notice 2026-17, "Modifications to Rules for Computing Taxable Income or Loss and Foreign Currency Gain or Loss Under Section 987"*

As requested in our comments on Notice 2026-17, NFTC requests guidance on the section 987 Controlled Foreign Corporation ("CFC") election in time for the extended deadline for the current tax year.

2. *Section 245A Regulations*

Issue: The Tax Cuts and Jobs Act ("TCJA") added section 245A, which provides for a dividends received deduction ("DRD") on dividends paid by a specified 10% owned foreign corporation to

a domestic corporation. The statutory text of the TCJA did not explicitly provide for the application of the section 245A DRD to dividends paid by a specified 10% owned foreign corporation to a CFC that is owned by an otherwise qualifying domestic corporation. However, there is ample regulatory authority in both sections 245A(g) and 954(b)(5) for Treasury regulations applying the section 245A DRD to CFCs in appropriate circumstances.

Moreover, footnote 1486 of the TCJA Conference Report indicates that a CFC should be treated as a domestic corporation for purposes of applying section 245A to dividends received by the CFC and paid by a specified 10% owned foreign corporation, consistent with Treas. Reg. §1.952-2.

Despite this directive from Congress, Treasury has not issued regulations confirming the application of section 245A at the CFC level to dividends paid by specified 10% owned foreign corporations. Further, the IRS released a Chief Counsel Memorandum in 2024 (CCA 202436010) that asserts that CFCs are not permitted to claim a section 245A DRD with respect to such dividends.

Recommendation: Clarify in regulatory guidance, consistent with the directive from Congress in the TCJA Conference Report, that if a CFC receives a dividend from a specified 10% owned foreign corporation, the indirect receipt of that dividend shall be treated for purposes of applying section 245A in the same manner as if the dividend was received directly by a domestic corporation from such foreign corporation.

Issue: *In Varian v. Commissioner* (163 T.C. 76 (2024)), the Tax Court held that Treas. Reg. §1.78-1(c) contravened the clear statutory text and that the regulation "falls outside the boundary that Congress may have delegated under section 245A or 7805." Given the administration's mandate in E.O. 14219, we request that the IRS withdraw the portion of the section 78 regulations that contravene the statute.

In *Liberty Global, Inc. v. United States,* 129 A.F.T.R.2d 2022-1373 (D. Colo. 2022), the Colorado District Court found that Treasury exceeded its statutory authority by imposing anti-abuse restrictions on the section 245A deduction that Congress did not enact. Thus, the court held that the 245A temporary regulations were invalid.

Recommendation: Treasury and the IRS should withdraw the guidance under Sections 78 and 245A that contravene the plain reading of the statute.

3. *Previously Taxed Earnings and Profits ("PTEP") and Related Basis Adjustments* (REG-105479-18) (NFTC Comments)

The NFTC appreciated the reopening of the comment period for the proposed PTEP regulations and urges Treasury to finalize that guidance.

Issue: As previously drafted, the PTEP regulations require unwarranted segregation of PTEP into multiple accounts based on tax year, income class, and tax rate, which places an excessive administrative burden on multinational enterprises. The regulations contain other problematic

provisions, including a share-by-share approach to basis adjustments under Section 961(b) and stringent ordering rules for PTEP distributions, which can discourage foreign earnings repatriation. In addition to Section 961(b), regulations under Section 965(g) at Treas. Reg. § 1.965-5 improperly attribute foreign taxes to Section 965 PTEP beyond what was contemplated by Congress, and the result is a disallowance of creditable foreign tax expenses beyond what is supported by the statutory text. However, the regulations do provide helpful guidance, consistent with Advice Memorandum (AM 2023-22), on the timing of CFC stock-basis adjustments and PTEP for mid-year distributions.

Additionally, the Proposed Regulations' approach to section 961(c) differs from many taxpayers' interpretations. While section 961(c) has been seen as a U.S. shareholder attribute, the Regulations treat it as a CFC attribute. This change impacts how distributions of PTEP are handled between CFCs, affecting section 961(b)(2) gains.

Recommendation: Reissue the PTEP rules to simplify PTEP and foreign tax tracking.

4. *Section 901(m) Issues and the Corporate Alternative Minimum Tax ("CAMT") Foreign Tax Credit*

Issue: The proposed CAMT regulations (Prop. Treas. Reg. §1.59-4) would restrict the CAMT foreign tax credit to "eligible taxes," expressly excluding taxes for which a credit is disallowed for regular tax purposes under Section 901(m), among other provisions. This approach imports a regular-tax-specific disallowance into the CAMT context without a sound policy basis.

Section 901(m) was designed to address mismatches between U.S. and foreign taxable income arising from covered asset acquisitions that create stepped-up asset basis for U.S. tax purposes — particularly amortization deductions under Section 197(a) — but do not result in a corresponding basis step-up for foreign tax purposes. The disallowance prevents taxpayers from claiming a foreign tax credit for taxes on income that is effectively sheltered at the U.S. level by those additional amortization deductions.

That rationale does not translate to CAMT. Notice 2026-7 provides an option to adjust AFSI under Section 197(a). However, if that option is not exercised the covered asset acquisition that triggers Section 901(m) for regular tax purposes does not produce the same CAMT basis step-up or related amortization deductions; the underlying mismatch that Section 901(m) was designed to address simply does not arise in the CAMT context.

Extending the Section 901(m) disallowance to the CAMT foreign tax credit would result in double taxation — the taxpayer would bear CAMT on income without receiving credit for the foreign taxes actually paid on that same income — contrary to the statutory purpose of Section 59(l). Guidance confirming that Section 901(m) does not apply for CAMT foreign tax credit purposes is necessary to avoid this arbitrary and inequitable result.

Requested Guidance: Clarification that the Section 901(m) foreign tax credit disallowance does not apply for purposes of the CAMT foreign tax credit

5. *Guidance under §174 and §174A Addressing Amortization of Research and Experimental Expenditures*

Requested Guidance: Regulations or other guidance addressing the amortization of research and experimental (R&E) expenditures under Sections 174 and 174A, including the following specific issues:

- Exclusion of the Accelerated R&D Deduction from 2025 FDDEI: The One Big Beautiful Bill provides that a taxpayer's Foreign-Derived Deduction Eligible Income ("FDDEI") deduction in years beginning after December 31, 2025, will not be reduced by research and experimentation expenses. This was in recognition that a taxpayer's investment in US-based innovation should not have the perverse effect of reducing its FDDEI tax benefit. At the same time, Congress allowed an accelerated tax deduction for previously capitalized domestic R&D expenses in 2025 or 2025 and 2026. This was similarly in recognition of the fact that taxpayers should not be penalized for investment in US-based innovation. However, the acceleration of previously capitalized domestic R&D expense into 2025 (or 2025 and 2026) results in additional expense being allocated and therefore reducing FDDEI. If the expenses are not accelerated, then the expense accrues at a time when it is not allocated to FDDEI. This reduces the benefit of the accelerated R&D deduction and arguably contravenes Congress's intent of incentivizing investment in US-based innovation. Treasury and the IRS should issue clarifying guidance confirming that any accelerated deduction a taxpayer claims for unamortized domestic R&D expenditures under Section 174A(f)(2) will not reduce FDDEI for the taxpayer's first tax year beginning after December 31, 2024.
- Clarification of the treatment of section 197 amortization for purposes of post-2025 FDDEI: Consistent with the FDDEI deduction's primary objective of incentivizing IP ownership in the US, the One Big Beautiful Bill amended section 250(b)(3)(A)(ii) to exclude research or experimental expenditures from FDDEI. However, the statute does not define the term "research or experimental expenses", and it is unclear whether section 197 amortization expense associated with acquired IP (which arguably represents R&D cost incurred by the developer of the IP prior to acquisition) should also be excluded. Treasury and the IRS should issue guidance clarifying that section 197 amortization constitutes research and experimental expenses under Section 250(b)(3)(A)(ii) for the taxpayers first tax year beginning after December 31, 2025.
- Election flexibility under §174A(c): Revenue Procedure 2025-28 provides that the §174A(c) election to capitalize and amortize R&D expenditures applies on an all-or-nothing basis to all domestic R&D expenditures. This is unnecessarily restrictive and departs from the project-by-project accounting under prior Treas. Reg. §1.174-4. Guidance should allow taxpayers to elect capitalization with respect to any portion of R&D expenditures or with respect to particular projects, 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).Amortization period commencement under §174A(c)(1)(b): The statute requires that the amortization period begin when the taxpayer first realizes benefits from the expenditures. This creates administrative complexity,

particularly for industries with lengthy R&D cycles that may exceed the 60-month amortization period. The amortization start date should align with the approach under §59(e), permitting deductions beginning in the taxable year the expenditure is made.

- Software development vs. maintenance distinction: Guidance further defining what constitutes software development (including upgrades and enhancements) versus software maintenance, affirming the principles in Notice 2023-63. Activities that should not constitute §174 software development include employee training, post-deployment maintenance (such as corrective debugging), data conversion, and installation activities.
- Confirmation of Treatment: We request that Treasury confirm that none of the guidance issued, including guidance pertaining to any relevant elections under section 59(e), 174, 174A, or other similar sections should be interpreted to change the character of impacted expenses. That is, any expenses which are properly characterized under the law as section 174 or section 174A expenses should not be treated as losing their character due to an election made by the taxpayer.

6. *NCTI & Foreign Tax Credits*

Issue: As Treasury works to finalize the guidance on NCTI and Section 250, we reiterate our comments that the "directly allocable" language of 905(b)(5)(C) should treat stewardship and similar expenses as not allocable to NCTI, consistent with the treatment of interest and R&D expense in 905(b)(5)(B).

Recommendation: Clarify in the regulations that stewardship and most other U.S. shareholder expenses are not allocable to NCTI.

7. *Regulations or Other Guidance under §41 Addressing Research Credit Substantiation*

Requested Guidance: Regulations or other guidance clarifying the substantiation requirements for the research credit under §41, specifically addressing the following:

- Direct supervision and direct support activities: Guidance affirmatively confirming that direct supervision and direct support activities are includible in the numerator of the "substantially all" fraction for purposes of computing qualified research expenses. This issue was litigated in *Little Sandy Coal Co. v. Commissioner*, and continued uncertainty creates compliance risk for taxpayers seeking to properly quantify their research credit.
- Statistical sampling: Guidance affirmatively permitting the use of statistical sampling as a method for substantiating research credit claims, providing taxpayers with a practical, cost-effective alternative to employee-by-employee or project-by-project documentation for large organizations with significant R&D workforces. Currently, taxpayers are often defending the choice of sampling method to the IRS, which creates an increased compliance burden. Thus, the guidance should provide a safe harbor for statistical sampling based on sample size, materiality, or appropriate other criteria.
- Amended return elections: Guidance allowing taxpayers to make a Traditional Research Credit ("TRC") or Alternative Simplified Credit ("ASC") election on an amended tax return, removing a technical barrier that currently prevents taxpayers from correcting their election choice after the original filing date.

8. *Regulations or Other Guidance under §168(k) – Bonus Depreciation*

Issue: Under current Treas. Reg. §1.168(k)-2(f), bonus depreciation elections (and elections out of bonus) may only be made by class of property (e.g., all 5-year MACRS assets) and must be made by each member of a consolidated group separately. Taxpayers have no ability to elect in or out at the individual asset level, by geographic location, or by trade or business.

The current all-or-nothing election structure creates significant inefficiencies for large, diversified businesses that operate across multiple jurisdictions and lines of business with different tax profiles. Targeted guidance permitting asset-level, trade-or-business-level, or geographic elections would reduce compliance burdens and allow taxpayers to optimize depreciation elections in a manner consistent with their actual business operations.

Requested Guidance: Regulations or other guidance providing greater flexibility for taxpayers making or revoking bonus depreciation elections under §168(k).

9. *Foreign Tax Redeterminations (FTRs) Under Section 905(c)*

Issue: TCJA eliminated the pre-TCJA "pooling" approach to accounting for foreign tax credits, significantly complicating how taxpayers account for Foreign Tax Redeterminations ("FTRs"), notify the IRS of FTRs, and pay extra tax due or request refunds for overpayment. The current regulations impose substantial compliance burdens on both taxpayers and the IRS:

- Amended Return Requirement: Taxpayers must file amended returns for the year in which the FTR arose rather than using a simpler process. This creates multiple amended filings for foreign tax adjustments related to the same prior year.
- Extensive Disclosure Requirements: Taxpayers must include additional extensive disclosures with current year tax returns notifying the IRS of historical changes in foreign taxes.
- Notification Timeline: Taxpayers must notify the IRS audit team within a 120-day window of any changes in foreign taxes resulting in additional U.S. tax liability for years under audit.
- Form 5471 Amendments: An FTR at one entity changes its earnings and profits and tested income, which changes GILTI allocation percentages and previously taxed earnings and profits at each CFC. One small change can result in changes to thousands of data points across all Form 5471s.
- State and Local Filing Requirements: Filing an amended federal return requires filing hundreds or thousands of amended state and local returns, often resulting in little or no adjustment to state and local tax liability.

Treasury should adopt streamlined FTR notification methods to reduce compliance burden on taxpayers and the IRS. For example:

- Form 1118 Schedule L: Treat as the regulatory notification requirement, allowing one schedule with current return for multiple prior-year FTRs; add line to amended Schedule J for tax payment
- Taxpayers Under Continuous Audit: Modify Rev. Proc. 2022-39 and Form 15307 to allow direct FTR disclosure to exam teams for all years, promoting audit efficiency. Further efficiency could also be gained by making adjustments without requiring the filing of an amended return leading to complex calculations.

Requested guidance: Treasury should adopt streamlined FTR notification methods to reduce compliance burden on taxpayers and the IRS.

10. Foreign Tax Credits

Issue: The Foreign branch category rules are over-formulaic and inconsistent with business reality for the operation of branches.

Recommendation: Replace or streamline the branch basket classification approach to align with business realities.

11. FDDEI

Issue: Notice 2025-78 confirms an exclusion from FDDEI applies to fully depreciated property sold for foreign use. This creates harsh results for remanufactured and refurbished property, resulting in a mismatch between economic gain and FDDEI exclusion.

Recommendation: Notwithstanding Notice 2025-78, Treasury has not addressed the business recommendation to exclude only gain equal to prior depreciation (like the section 1245 depreciation recapture rule) to allow excess gain to be treated as FDDEI.

Issue: Separately, guidance to identify and allocate deductions which are "properly allocable" to gross FDDEI (including interest/R&E mechanics and category-level computation) is requested.

Recommendation: Clarify how/which deductions are "properly allocable," with administrable rules for common expense types.

12. Base Erosion and Anti-Abuse Tax ("BEAT")

Issue: The mechanics of the BEATmay force taxpayers to waive legitimate deductions in order to preserve credits. This creates real tax costs even where no BEAT is ultimately owed.

Recommendation: Provide relief to better coordinate BEAT with credits, in particular FTCs.

Issue: The BEAT was intended to impose a tax on earnings stripping and other transactions designed to shift income to low-tax jurisdictions that were prevalent at the time of enactment. The Tax Cuts and Jobs Act reduced the U.S. corporate rate to 21 percent and introduced structural protections (including GILTI and interest limitations), while many U.S. trading

partners have adopted minimum tax regimes that ensure cross-border payments are subject to baseline taxation. BEAT may apply to payments that do not present base erosion concerns.

BEAT was designed to address abusive arrangements that erode the U.S. tax base, however, through its mechanical application to modern ordinary-course business transactions, BEAT may impose additional tax on non-abusive payments, resulting in overinclusive outcomes that discourage cross-border activity. Without these changes, BEAT may create disincentives for inbound investment, including the onshoring of intellectual property, expansion of U.S.-based manufacturing and supply chains, and research and development activity.

Requested guidance and recommendation: Treasury should adopt regulations to better target the BEAT to abusive base erosion payments and eliminate risks of double taxation

13. Tax Residency Certificates

Issue: Taxpayers need to obtain tax residency certificates (Form 6166) to claim income tax treaty benefits in foreign jurisdictions. This certification serves as official proof from the IRS that the entity is a tax resident. Foreign tax authorities typically require this documentation when companies apply for lower treaty withholding rates or withholding exemption on income from foreign sources, such as dividends, royalties, or interest payments. This documentation is also issued to customers, reducing the amount of income tax incurred.

To obtain tax residency certification, corporations must file Form 8802, Application for U.S. Residency Certification, with the IRS. The application requires basic information about the entity, including its Employer Identification Number (EIN), business structure, and tax filing history. Companies must specify the tax year(s) for which certification is needed and identify the countries where the certification will be used. A user fee of $185 is required with each Form 8802 submission. The application window for a new year begins in December of the preceding year. Processing typically takes 8-12 weeks from the time the IRS receives a complete application. When the certificates are processed timely manner, they are issued in February and dated on the issuance date. Since many foreign countries rely on the issuance date, companies can often incur excess tax on payments made before the issuance date. There are times however, that residency certificates are very delayed due to high volume or due to limitations of government systems where they are not able to find the checks associated with each filing.

The certificates should be issued before the tax year ends, with an effective date of January 1 of the year to allow companies to benefit from reduced withholding tax rates.

A secure online portal could be developed using multi-factor authentication where taxpayers would first register using their EIN and other verifying information, creating a validated account linked to their IRS records. The IRS systems could generate residency certificates for all years based on the information contained within the taxpayers' electronically filed tax returns. Alternatively, users could submit electronic Form 8802 applications through the portal, make payments via integrated payment processing, and track their application status in real-time. With the automation of the process, taxpayers should be able to receive residency certificates with an issuance date of January 1st of each year.

The portal would maintain a digital repository of all issued Form 6166 certificates, allowing authorized users to access, download, and print their certificates on demand. The system could also feature automated email notifications for application updates and renewal reminders.

The implementation of a digital certification system would result in substantial cost savings and operational efficiencies for the IRS by eliminating paper-based processes, including the manual scanning of applications, printing of certifications, and physical mailing of documents to requestors. This modernization would automate the verification of entities' tax filing history through direct database integration, while also removing the need for dedicated personnel to operate phone lines for application status inquiries, as users could track their applications in real-time through the online portal, ultimately streamlining the entire certification process and reducing administrative overhead.

Requested guidance: We recommend that Treasury and the IRS implement targeted procedural reforms to significantly reduce the time required to issue residency certificates.

14. *Form 8832 Entity Classification Election & Form SS-4 – Application for Employee Identification Number (EIN)*

Issue: Through Form 8832, Taxpayers are able to elect how an entity will be classified for U.S. tax purposes. In order for the taxpayer to have a valid election, the Form 8832 must contain a valid EIN. An EIN is obtained by completing Form SS-4. The Government has developed an online application for entities that have a principal place of business in the US, where the person applying is the responsible party or an authorized representative or the applicant has the responsible party's social security number or individual taxpayer ID number (ITIN). For taxpayers that do not meet those tests, they need to apply by phone, fax, or mail. EINs are also limited to 1 EIN per responsible party per day. Applying by phone is the most efficient way to receive an EIN because the person is able to process and fax a confirmation the same day. This process requires significant IRS resources and takes significant taxpayer resources.

Form 8832 must be mailed to an IRS office to elect a certain tax classification for a business entity. The IRS then mails confirmation of the accepted election back to the taxpayer. However, this process can take upwards of six months. The Government should expand online EIN application access to foreign persons applying for an EIN where a U.S. responsible party is provided, specifically, where the responsible party has a valid SSN/ITIN and can be verified through existing systems. This would streamline the process for taxpayers and reduce the number of resources required to support the EIN process.

The government should consider transitioning the Form 8832 process to an online platform. Making any of these updates would align with broader government initiatives to digitize services while maintaining appropriate controls through the U.S. owner requirement.

Requested guidance: Treasury and the IRS should expand the online application platform to foreign EINs and permit more than one EIN per day.

15. Expand IRS Electronic Signature Program

Requested guidance: Treasury and the IRS should expand the Electronic Signature Program to cover all IRS forms.

The IRS has formalized its electronic signature policy through Internal Revenue Manual (IRM) 10.10.1, IRS Electronic Signature (e-Signature) Program, effective August 12, 2024. This program evolved from the temporary e-signature policies implemented during previous years. IRM Exhibit 10.10.1-2 provides a list of tax forms that are permitted to deviate from handwritten signature requirements.

Expanding the current e-signature form list to include all IRS forms, prioritizing frequently filed documents such as:

- Form SS-4 (Application for Employer Identification Number)
- Form 1120-F (U.S. Income Tax Return of a Foreign Corporation)
- Form 8023 (Elections Under Section 338 for Corporations Making Qualified Stock Purchases)

16. Notice 2025-04

Requested Guidance: Notice 2025-04 issued on December 18, 2024, provided the Application of the Simplified and Streamlined Approach ("SSA") under Section 482. NFTC believes the SSA is a helpful tool in providing tax certainty and simplification. We reiterate our 2025 comments on Notice 2025-04 and request proposed regulations on the SSA.

17. OFL Rules under Treas. Reg. § 1.904(f)-2(c)(1)

Requested Guidance: Treas. Reg. § 1.904(f)-2(c)(1) should be withdrawn because it is not consistent with the best reading of the underlying statute (Section 904(f)(1)). To provide taxpayers clarity as to the application of Section 904(f)(1), prior Treas. Reg. § 1.904(f)-2(c)(1) (as finalized in T.D. 8153 (1987)) should be reinstated (and the related example revised accordingly).

Issue: As currently drafted, Treas. Reg. § 1.904(f)-2(c)(1) requires OFL recapture in an amount equal to the aggregate of, with respect to each separate category of income, the lesser of the taxpayer's overall foreign loss account in that separate category, or the amount of foreign source taxable income in that separate category for the taxable year, capped at an aggregate amount of fifty percent of the taxpayer's total foreign source taxable income (subject to the taxpayer's election to recapture a greater amount). Thus, the 50% limitation of section 904(f)(1)(B) is, under the current regulations, applied on the basis of the taxpayer's aggregate foreign source taxable income, rather than on the basis of the taxpayer's foreign source taxable income in the separate category to which the OFL recapture account relates.

The current regulation is not consistent with the best reading of the statute, because it inappropriately assigns two different meanings to the same phrase repeated in a single sentence in section 904(f)(1). Specifically, it interprets the phrase "of the taxpayer's taxable income from sources without the United States" in the flush language of Section 904(f)(1) to refer to foreign source taxable income in the relevant separate category (as it must, taking into account section 904(d) and the overall framework of the statute) but interprets the exact same phrase used in clause (B) of the same sentence to encompass all of the taxpayer's foreign source taxable income in all separate categories. This is not the best reading of the statutory language. Treasury and the IRS said as much by originally adopting final regulations in 1987 that interpreted the repeated statutory language consistently, referring in each case to the taxpayer's foreign source taxable income in the relevant separate category. Notably, the only explanation offered for the later reversal in position was that the change was made to reflect a statement in the Conference Report with respect to the Tax Reform Act of 1986. However, that legislation did not modify Section 904(f)(1) (which was enacted in 1976), and it is well established that such after-the-fact legislative history has no bearing on the interpretation of a statute. In order to conform to the best reading of the statute, the fifty percent calculation in Treas. Reg. § 1.904(f)-2(c)(1) should be reverted to the prior language, referencing "fifty percent of the taxpayer's foreign source taxable income of the same limitation as the loss that resulted in the overall foreign loss account".

The introduction of Section 951A in 2017 materially increased the amount of foreign source income in a separate category outside the general limitation category, and therefore the significance of the fifty percent limitation in Section 904(f)(1), for many taxpayers with historical pre-TCJA general limitation OFLs. Generally, for these companies, Section 951A inclusions significantly exceed other foreign source income. In such a case, the approach of the current regulations that apply the fifty percent limitation based on total foreign source taxable income, including Section 951A inclusions, results in the taxpayer's foreign source income in the OFL category being subject to full OFL recapture up to the amount of the OFL. In addition to being contrary to the statute, this result disadvantages companies with historical pre-TCJA OFL accounts. Further, it discourages domestic investment and activities that would lead to the generation of future foreign source taxable income in the US (income generated through development and ownership of IP in the US, as an example), as the recapture result disallows any foreign tax credit in the basket to which the OFL is recaptured, resulting in double taxation.

The OBBBA made important changes related to Section 951A intended to mitigate unintended tax costs for U.S. businesses not shifting earnings to low-tax jurisdictions. To fully realize the benefit of those changes, narrowing the impact of Section 951A to its intended scope, the OFL regulations should be revised to eliminate this inappropriate and unintended collateral consequence of Section 951A inclusions.

Recommendation: NFTC recommends the withdrawal of the OFL regulations.

18. Section 385 Final Regulations

Issue: In 2016, Treasury finalized current Treas. Reg. §§ 1.385-3 and 1.385-4 to address inversions and concerns regarding earnings stripping. Since 2016, the TCJA included a suite of provisions that address base erosion, including tightening section 163(j), anti-hybrid rules under section 267A, and incentives to onshore intellectual property. Recently, the OBBBA further tightened section 163(j) and provided more incentives for multinational groups to onshoring of intellectual property and headquarters. The implementation of the Global Anti-Base Erosion Model Rules in 2024 and 2025 ensures that multinational groups will pay a minimum tax of at least 15% on income, further reducing the concerns of base erosion. In light of these changes, multinational groups are considering onshoring to the United States. The section 385 regulations have outlived their usefulness in light of these developments. These final regulations are not the best reading of he statute under Loper Bright Enterprises v. Raimondo, 603 U.S. 871 (2024). Section 385(b) requires that "[t]he regulations prescribed under this section shall set forth factors which are to be taken into account in determining with respect to a particular factual situation whether a debtor-creditor relationship exists or a corporation- shareholder relationship exists." The final regulations do not contain factors – they contain bright-line rules that treat debt instruments as equity. These regulations are contrary to the statute and are far from the best reading of the statute.

The regulations interfere with ordinary business loans between related parties. For example, the final regulations place significant limitations on cash pooling for global groups, impeding business operations in the United States.

Recommendation: NFTC recommends the withdrawal of Treas. Reg. §§ 1.385-3 and 1.385-4.

19. CAMT AFSI

Issue: The currently required top-down approach for the calculation of AFSI by a foreign-parented group results in substantial compliance challenges. The bottom-up approach could potentially be considered in connection with "guardrails" in the form of assurances by officers of the parent company that the US financials used in preparing US tax returns accurately represent the contribution of the US taxpayer to the global consolidated financials.

Requested guidance: Treasury and the IRS should permit a bottom-up approach for the calculation of AFSI by a foreign parented group.

20. Research and Development Tax Credit

Requested Guidance: Regulations or other guidance addressing Form 6765 for computing the research and development tax credit, including the following specific issues:

- Eliminate the requirement to report "officers" wages. The IRS does not adequately define "officer;" moreover, this information is unnecessarily burdensome and does not reduce risk.
- Define "major portion of the business" and provide examples.

- Define “new category of expenditure” and provide examples.
- Revise Section G and replace it with a framework that is administrable and provide clear instructions with detailed guidance, clear examples and safe harbors. Overall, Section G creates increased compliance burdens that does not provide the IRS with the ability to assess risk or identify questionable claims by expanding the reporting by business component while using simplified descriptors. In general, taxpayers do not in the course of ordinary business track wages expenses by supervisory or support functions. Implementing systems to track these costs would require shifting the focus away from research and development towards accounting functions, possibly reducing the benefit of the credit. Section G also requests disclosure of details related to projects under development that have not yet been released publicly. Such disclosures may include proprietary information, creating a potential conflict. The purpose of the Research Tax Credit is to incentivize U.S. companies to assume financial risk in developing new technologies and innovations. Given the highly competitive nature of this work, these activities are often confidential. As a result, the requirements outlined in Section G, specifically 49(f) (“Describe the information sought to be discovered”) appear counterproductive and may undermine the original intent of the Research Tax Credit.
- Eliminate the distinction between direct support wages and direct supervisory wages. This would reduce compliance costs and administrative burdens.